

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 162

HOUSE BILL 2579

AN ACT

AMENDING SECTIONS 28-6924, 28-7361, 28-7362, 28-7363, 28-7365, 34-101, 34-102, 34-103, 34-602, 34-603, 34-605 THROUGH 34-608, 41-2503, 41-2546, 41-2573, 41-2574, 41-2576, 41-2578 AND 41-2579, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 20, ARTICLE 13, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 28-7366 AND 28-7367; RELATING TO PROCUREMENT OF PROFESSIONAL AND CONSTRUCTION SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 28-6924, Arizona Revised Statutes, is amended to
3 read:

4 28-6924. Progress payments

5 A. The following apply to the department's highway construction
6 projects awarded pursuant to section 28-6923, 28-7365 OR 28-7366:

7 1. Progress payments may be made by the department to the contractor
8 on the basis of a duly certified and approved estimate of the work performed
9 during a preceding period of time. The progress payments shall be paid on or
10 before fourteen days after the estimate of the work is certified and
11 approved. The estimate of the work shall be deemed received by the
12 department on submission to the person designated by the department for the
13 submission, review or approval of the estimate of the work. An estimate of
14 the work submitted under this section shall be deemed approved and certified
15 after seven days from the date of submission unless before that time the
16 department prepares and issues a specific written finding detailing those
17 items in the estimate of the work that are not approved and certified under
18 the contract. The department may withhold an amount from the progress
19 payment sufficient to pay the expenses the department reasonably expects to
20 incur in correcting the deficiency set forth in the written finding. On
21 completion and acceptance of separate divisions of the contract on which the
22 price is stated separately in the contract, payment may be made in full
23 including retained percentages, less deductions, unless a substitute security
24 has been provided.

25 2. The contractor shall pay to the contractor's subcontractors or
26 material suppliers and each subcontractor shall pay to the subcontractor's
27 subcontractors or material suppliers, within seven days of receipt of each
28 progress payment, unless otherwise agreed in writing by the parties, the
29 respective amounts allowed the contractor or subcontractor on account of the
30 work performed by the contractor's or subcontractor's subcontractors or
31 material suppliers, to the extent of each subcontractor's or material
32 supplier's interest in the amount. These payments to subcontractors or
33 material suppliers shall be based on payments received pursuant to this
34 section. Any diversion by the contractor or subcontractor of payment
35 received for work performed on a contract or failure to reasonably account
36 for the application or use of the payments constitutes grounds for
37 disciplinary action by the registrar of contractors. A subcontractor or
38 material supplier shall notify the registrar of contractors and the
39 department in writing of any payment less than the amount of percentage
40 approved for the class or item of work as set forth in this section.

41 3. A subcontractor may notify the department in writing requesting
42 that the subcontractor be notified by the department in writing within five
43 days after payment of each progress payment made to the contractor. The
44 subcontractor's request under this paragraph remains in effect for the
45 duration of the subcontractor's work on the project.

1 4. If any payment to a contractor is delayed after the date due,
2 interest shall be paid at the rate of one per cent per month or a fraction of
3 the month on the unpaid balance.

4 5. If any periodic or final payment to a subcontractor or material
5 supplier is delayed by more than seven days after receipt of the periodic or
6 final payment by the contractor or subcontractor, the contractor or
7 subcontractor shall pay the subcontractor or material supplier interest,
8 beginning on the eighth day, at the rate of one per cent per month or a
9 fraction of a month on the unpaid balance.

10 B. A contract for construction shall not materially alter the rights
11 of any contractor, subcontractor or material supplier to receive prompt and
12 timely payment as provided under this section.

13 C. Nothing in this section prevents a contractor or subcontractor, at
14 the time of application and certification to the department or contractor,
15 from withholding the application and certification to the department or
16 contractor for payment to the subcontractor or material supplier for
17 unsatisfactory job progress, defective construction work or materials not
18 remedied, disputed work or materials, third party claims filed or reasonable
19 evidence that a claim will be filed, failure of a subcontractor to make
20 timely payments for labor, equipment and materials, damage to the contractor
21 or another subcontractor, reasonable evidence that the subcontract cannot be
22 completed for the unpaid balance of the subcontract amount or a reasonable
23 amount for retention that does not exceed the annual percentage retained by
24 the department.

25 D. This section creates no duty of the department to a subcontractor
26 or material supplier other than the duty to notify pursuant to subsection A,
27 paragraph 3 of this section and creates no cause of action in favor of a
28 subcontractor or material supplier against this state, the department or any
29 state employee or agent.

30 Sec. 2. Section 28-7361, Arizona Revised Statutes, is amended to read:

31 28-7361. Definitions

32 In this article, unless the context otherwise requires:

33 1. "ARCHITECT SERVICES" MEANS THOSE PROFESSIONAL ARCHITECT SERVICES
34 THAT ARE WITHIN THE SCOPE OF ARCHITECTURAL PRACTICE AS PROVIDED IN TITLE 32,
35 CHAPTER 1.

36 2. "CONSTRUCTION-MANAGER-AT-RISK" MEANS A PROJECT DELIVERY METHOD IN
37 WHICH:

38 (a) THERE IS A CONTRACT FOR CONSTRUCTION SERVICES THAT IS SEPARATE
39 FROM THE CONTRACT FOR DESIGN SERVICES.

40 (b) DESIGN SERVICES ARE PERFORMED UNDER A SEPARATE DESIGN SERVICES
41 CONTRACT, EXCEPT THAT AS TO BRIDGES AND OTHER TRANSPORTATION FACILITIES THE
42 DEPARTMENT MAY PERFORM WITH ITS OWN EMPLOYEES OR FORCE ACCOUNT PRELIMINARY
43 DESIGN AND EITHER:

44 (i) IN THE CASE OF BRIDGES ONLY, ALL DESIGN SERVICES UP TO FINAL
45 DESIGN.

1 (ii) IN THE CASE OF OTHER TRANSPORTATION FACILITIES, UP TO TWENTY PER
2 CENT OF THE DESIGN WORK.

3 (c) THE CONTRACT FOR CONSTRUCTION SERVICES MAY BE ENTERED INTO AT THE
4 SAME TIME AS THE DESIGN SERVICES ARE COMMENCED OR AT A LATER TIME.

5 (d) DESIGN AND CONSTRUCTION OF THE PROJECT MAY BE IN SEQUENTIAL PHASES
6 OR CONCURRENT PHASES.

7 (e) FINANCE SERVICES, MAINTENANCE SERVICES, OPERATIONS SERVICES,
8 PRECONSTRUCTION SERVICES AND OTHER RELATED SERVICES MAY BE INCLUDED.

9 3. "CONSTRUCTION SERVICES" MEANS EITHER OF THE FOLLOWING FOR
10 CONSTRUCTION-MANAGER-AT-RISK AND JOB-ORDER-CONTRACTING PROJECT DELIVERY
11 METHODS:

12 (a) CONSTRUCTION, EXCLUDING SERVICES, THROUGH THE
13 CONSTRUCTION-MANAGER-AT-RISK OR JOB-ORDER-CONTRACTING PROJECT DELIVERY
14 METHODS.

15 (b) A COMBINATION OF CONSTRUCTION AND, AS ELECTED BY THE DEPARTMENT,
16 ONE OR MORE RELATED SERVICES, SUCH AS FINANCE SERVICES, MAINTENANCE SERVICES,
17 OPERATIONS SERVICES, DESIGN SERVICES AND PRECONSTRUCTION SERVICES, AS THOSE
18 SERVICES ARE AUTHORIZED IN THE DEFINITION OF CONSTRUCTION-MANAGER-AT-RISK OR
19 JOB-ORDER-CONTRACTING.

20 4. "CONTRACT" MEANS ALL TYPES OF DEPARTMENT AGREEMENTS, REGARDLESS OF
21 WHAT THEY ARE CALLED, FOR PROCUREMENTS PURSUANT TO THIS ARTICLE.

22 5. "CONTRACTOR" MEANS ANY PERSON WHO HAS A CONTRACT WITH THE
23 DEPARTMENT.

24 ~~1.~~ 6. "Design-build" means the process of entering into and managing
25 a contract between the department and another party in which the other party
26 agrees to both design and build a highway, a structure, a facility or other
27 items specified in the contract.

28 ~~2.~~ 7. "Design-builder" means any individual, partnership, joint
29 venture, corporation or other legal entity that is appropriately licensed in
30 this state and that furnishes the necessary design services, in addition to
31 construction of the work, whether by itself or through subcontracts,
32 including subcontracts for architectural and engineering services.

33 8. "DESIGN SERVICES" MEANS ARCHITECT SERVICES, ENGINEER SERVICES OR
34 LANDSCAPE ARCHITECT SERVICES.

35 ~~3.~~ 9. "Emergency" means an immediate threat to public health, welfare
36 or safety caused by flood, earthquake, hurricane, tornado, explosion, fire or
37 other catastrophe such that compliance with normal bidding procedures for
38 repair or reconstruction of transportation facilities would be impracticable
39 or contrary to the public interest.

40 10. "ENGINEER SERVICES" MEANS THOSE PROFESSIONAL ENGINEER SERVICES THAT
41 ARE WITHIN THE SCOPE OF ENGINEERING PRACTICE AS PROVIDED IN TITLE 32,
42 CHAPTER 1.

43 11. "FINANCE SERVICES" MEANS FINANCING FOR A CONSTRUCTION SERVICES
44 PROJECT.

1 12. "JOB-ORDER-CONTRACTING" MEANS A PROJECT DELIVERY METHOD IN WHICH:
2 (a) THE CONTRACT IS FOR INDEFINITE QUANTITIES OF CONSTRUCTION AND, AT
3 THE ELECTION OF THE DEPARTMENT, MAY OR MAY NOT INCLUDE A GUARANTEED MINIMUM
4 AMOUNT OF WORK.

5 (b) THE CONSTRUCTION TO BE PERFORMED IS SPECIFIED IN JOB ORDERS ISSUED
6 DURING THE CONTRACT.

7 (c) FINANCE SERVICES, MAINTENANCE SERVICES, OPERATIONS SERVICES,
8 PRECONSTRUCTION SERVICES, DESIGN SERVICES AND OTHER RELATED SERVICES MAY BE
9 INCLUDED.

10 13. "LANDSCAPE ARCHITECT SERVICES" MEANS THOSE PROFESSIONAL LANDSCAPE
11 ARCHITECT SERVICES THAT ARE WITHIN THE SCOPE OF LANDSCAPE ARCHITECTURAL
12 PRACTICE AS PROVIDED IN TITLE 32, CHAPTER 1.

13 14. "MAINTENANCE SERVICES" MEANS ROUTINE MAINTENANCE, REPAIR AND
14 REPLACEMENT OF EXISTING FACILITIES, STRUCTURES, BUILDINGS OR REAL PROPERTY.

15 15. "OPERATIONS SERVICES" MEANS ROUTINE OPERATION OF EXISTING
16 FACILITIES, STRUCTURES, BUILDINGS OR REAL PROPERTY.

17 16. "PERSON" MEANS ANY CORPORATION, BUSINESS, INDIVIDUAL, UNION,
18 COMMITTEE, CLUB, OTHER ORGANIZATION OR GROUP OF INDIVIDUALS.

19 17. "PRECONSTRUCTION SERVICES" MEANS ADVICE DURING THE DESIGN PHASE.

20 18. "SPECIFIC SINGLE PROJECT" MEANS A PROJECT THAT IS CONSTRUCTED AT A
21 SINGLE LOCATION, AT A COMMON LOCATION OR FOR A COMMON PURPOSE.

22 19. "SUBCONTRACTOR" MEANS A PERSON WHO CONTRACTS TO PERFORM WORK OR
23 RENDER SERVICE TO A CONTRACTOR OR TO ANOTHER SUBCONTRACTOR AS A PART OF A
24 CONTRACT WITH THE DEPARTMENT.

25 Sec. 3. Section 28-7362, Arizona Revised Statutes, is amended to read:

26 28-7362. Emergency construction

27 A. Notwithstanding any other law, if the director determines that an
28 emergency exists, the director may award a contract for the reconstruction of
29 transportation facilities necessary to preserve the health, welfare or safety
30 of persons or property ~~on the basis of as many competitive bids as can be~~
31 ~~obtained in time to address the emergency and without public opening of bids.~~

32 B. The director shall award a contract pursuant to this section with
33 such competition as is practicable under the circumstances.

34 C. An award under this section shall be limited to the reconstruction
35 necessary to satisfy the emergency need.

36 D. The director shall include the following in the contract file and
37 in the director's office:

38 1. A written report describing the basis for the determination that an
39 emergency existed.

40 2. The process by which the contractor was selected.

41 E. As soon as practicable, the director shall make a written report to
42 the governor and to the board describing any awards made pursuant to this
43 section. The report shall include:

44 1. The written report of the basis for the director's determination
45 that an emergency existed.

1 2. A description of the reconstruction work needed, the process of
2 selection of the contractor and the progress of the work under the emergency
3 award.

4 F. At the conclusion of the work, the director shall make a final
5 report to the board and the governor describing the project and the
6 performance of the work.

7 Sec. 4. Section 28-7363, Arizona Revised Statutes, is amended to read:
8 28-7363. Design-build method of project delivery

9 A. Notwithstanding any other law, the department may use the
10 design-build method of project delivery on a project if the department makes
11 a determination in writing that it is appropriate and in the best interests
12 of the department to use the design-build method of project delivery for that
13 project, except that:

14 1. The department shall not enter into a contract to operate any
15 structure, facility or other item pursuant to this article.

16 ~~2. The department shall not enter into contracts for more than two~~
17 ~~design-build projects in each fiscal year.~~

18 ~~3. 2. Each design-build project shall be a specific, single project.~~
19 ~~with a minimum construction cost of forty million dollars. The department~~
20 ~~shall not artificially combine or aggregate projects in order to circumvent~~
21 ~~the minimum construction cost requirement. For the purposes of this~~
22 ~~paragraph, "specific, single project" means a project that is constructed at~~
23 ~~a single location, at a common location or for a common purpose.~~

24 ~~4. 3. The department shall not commence any design-build project~~
25 ~~after June 30, 2007 DECEMBER 31, 2025. For the purposes of this paragraph, a~~
26 ~~project is commenced on the date the department and design-builder execute~~
27 ~~SOLICITS the contract for the project. If the department and design-builder~~
28 ~~execute SOLICITS a design-build contract on or before June 30, 2007 DECEMBER~~
29 ~~31, 2025, THE CONTRACT MAY BE EXECUTED AND services and construction under~~
30 ~~the contract may be rendered in whole or in part after June 30, 2007 DECEMBER~~
31 ~~31, 2025.~~

32 B. The estimated cost of the project shall not include the cost to
33 procure any right-of-way or other cost of condemnation. The cost to procure
34 any right-of-way or other cost of condemnation remains at all times the
35 responsibility of the department. The department shall obtain all necessary
36 rights-of-way.

37 C. The department is responsible for preparation and acquisition of
38 all environmental documents, including the scope of any remediation and
39 required clearances.

40 D. If construction of a design-build project involves railroad
41 facilities, the railroad shall approve the use of the design-build delivery
42 method before the department awards the design-build contract.

43 E. To ensure fair, uniform, clear and effective procedures that will
44 deliver a quality project on time and within budget, the director, in
45 conjunction with the appropriate and affected professionals and contractors,

1 may adopt procedures for procuring a project using the design-build method of
2 project delivery.

3 F. The provisions of sections 28-6923 and 28-6924 relating to bid,
4 performance and payment bonds and to change orders, progress payments,
5 contract retentions, definitions and authority to award contracts apply to
6 department design-build projects for transportation facilities pursuant to
7 this article.

8 ~~G. On or before January 15 of each year, the director of the~~
9 ~~department of transportation shall transmit to the secretary of state a~~
10 ~~report on the benefits associated with the use of design-build in procuring~~
11 ~~construction services. The report shall include the number of projects~~
12 ~~completed in the preceding calendar year using design-build, the cost and~~
13 ~~description of each project and an estimate of any cost savings or other~~
14 ~~benefits realized through the use of that procurement method.~~

15 Sec. 5. Section 28-7365, Arizona Revised Statutes, is amended to read:

16 28-7365. Design-build; two-phase solicitation

17 A. If the department determines that the design-build method of
18 project delivery is appropriate, the department shall establish a two-phase
19 procedure for awarding the design-build contract. THE DEPARTMENT SHALL LIMIT
20 EACH SOLICITATION FOR A DESIGN-BUILD CONTRACT TO A SPECIFIC SINGLE PROJECT.

21 B. During phase one, and before solicitation, the director shall
22 appoint a selection team of at least three persons. At least one-half of the
23 selection team shall be architects or engineers who are registered pursuant
24 to section 32-121. The selection team members may be either department
25 employees or outside consultants. The selection team shall also include AT
26 LEAST ONE PERSON WHO IS A SENIOR MANAGEMENT EMPLOYEE OF a licensed contractor
27 who is not involved in the project. Any architect or engineer who is serving
28 on the selection team and who is not a department employee shall not be
29 otherwise involved in the project. The department shall prepare documents
30 for a request for qualifications.

31 C. The request for qualifications shall include all of the following:

32 1. The minimum qualifications of the design-builder.

33 2. A scope of work statement and schedule.

34 3. Documents defining the project requirements.

35 4. The form of contract to be awarded.

36 5. The selection criteria for compiling a short list and the number of
37 firms to be included on the short list. At least three but not more than
38 five firms shall be included on the short list.

39 6. A description of the phase two requirements and subsequent
40 management needed to bring the project to completion.

41 7. The maximum time allowable for design and construction.

42 8. The department's estimated cost of design and construction.

43 D. The selection team shall evaluate the design-build qualifications
44 of responding firms and shall compile a short list of firms in accordance
45 with technical and qualifications-based criteria. The number of firms on the

1 short list shall be the number of firms specified in the request for
2 qualifications, except that, if a smaller number of firms responds to the
3 solicitation or if one or more of the firms on the short list drop out so
4 that only two firms remain on the short list, the selection team may proceed
5 with the selection process with the remaining firms if at least two firms
6 remain or the selection team may readvertise as the selection team deems
7 necessary.

8 E. During phase two, the department shall issue a request for
9 proposals to the design-builders on the short list. The request shall
10 include:

11 1. The scope of work, including programmatic, performance and
12 technical requirements, conceptual design, specifications and functional and
13 operational elements for the delivery of the completed project, which shall
14 all be prepared by an architect or engineer, as appropriate, who is
15 registered pursuant to section 32-121.

16 2. A description of the qualifications required of the design-builder
17 and the selection criteria, including the weight or relative order, or both,
18 of each criterion.

19 3. Copies of the contract documents that the successful proposer will
20 be expected to sign.

21 4. The maximum time allowable for design and construction.

22 5. The department's estimated cost of design and construction.

23 6. The requirement that a proposal be segmented into two parts, a
24 technical proposal and a price proposal. Each proposal shall be in a
25 separately sealed, clearly identified package and shall include the date and
26 time of the submittal deadline. The technical proposal shall include a
27 schedule, schematic design plans and specifications, technical reports,
28 calculations, permit requirements, applicable development fees and other data
29 requested in the request for proposals. The price proposal shall contain all
30 design, construction, engineering, inspection and construction costs of the
31 proposed project.

32 7. The date, time and location of the public opening of the sealed
33 price proposals.

34 8. Other information relevant to the project.

35 F. IF STATED IN THE REQUEST FOR PROPOSALS, IN ORDER TO INFORM EACH
36 FIRM WHETHER THE FIRM'S CONCEPT IS RESPONSIVE TO THE REQUEST FOR PROPOSALS,
37 THE DEPARTMENT MAY ENTER INTO A SEPARATE CONFIDENTIAL DISCUSSION WITH EACH
38 FIRM ON THE SHORT LIST TO DISCUSS ALTERNATIVE TECHNICAL CONCEPTS THAT THE
39 FIRM MAY PROPOSE.

40 ~~F. G. After reviewing the proposals,~~ The department shall proceed as
41 follows:

42 1. The selection team shall REVIEW THE TECHNICAL PROPOSALS AND score
43 the technical proposals using the selection criteria in the request for
44 proposals. The technical review team shall then submit a technical proposal

1 score for each design-builder to the department. The technical review team
2 shall reject any proposal it deems to be nonresponsive.

3 2. The department shall announce the technical proposal score for each
4 design-builder, shall publicly open the sealed price proposals and shall
5 divide each design-builder's price by the score that the selection team has
6 given to it to obtain an adjusted score. The design-builder selected shall
7 be that responsive and responsible design-builder whose adjusted score is the
8 lowest.

9 3. If a time factor is included with the selection criteria in the
10 request for proposals package, the department may also adjust the bids using
11 a value of the time factor established by the department. The value of the
12 time factor shall be a value per day. The adjustment shall be based on the
13 total time value. The total time value is the design-builder's proposed
14 number of days to complete the project multiplied by the factor. The time
15 adjusted price is the total time value plus the bid amount. This adjustment
16 shall be used for selection purposes only and shall not affect the
17 department's liquidated damages schedule or incentive and disincentive
18 program. An adjusted score shall then be obtained by dividing each
19 design-builder's time adjusted price by the score given by the technical
20 review team. The department shall select the responsive and responsible
21 design-builder whose adjusted score is the lowest.

22 4. Unless all proposals are rejected, the board shall award the
23 contract to the responsive and responsible design-builder with the lowest
24 adjusted score. The board reserves the right to reject all proposals.

25 5. The department shall award a stipulated fee equal to two-tenths of
26 one per cent of the department's estimated cost of design and construction to
27 each short list responsible proposer who provides a responsive, but
28 unsuccessful proposal. If the department does not award a contract, all
29 responsive proposers shall receive the stipulated fee. If the department
30 cancels the contract before reviewing the technical proposals, the department
31 shall award each design-builder on the selected short list a stipulated fee
32 equal to two-tenths of one per cent of the department's estimated cost of
33 design and construction. The department shall pay the stipulated fee to each
34 proposer within ninety days after the award of the contract or the decision
35 not to award a contract. In consideration for paying the stipulated fee, the
36 department may use any ideas or information contained in the proposals in
37 connection with any contract awarded for the project, or in connection with a
38 subsequent procurement, without any obligation to pay any additional
39 compensation to the unsuccessful proposers. Notwithstanding the other
40 provisions of this paragraph, an unsuccessful short list proposer may elect
41 to waive the stipulated fee. If an unsuccessful short list proposer elects
42 to waive the stipulated fee, the department may not use ideas and information
43 contained in the proposer's proposal, except that this restriction does not
44 prevent the department from using any idea or information if the idea or

1 information is also included in a proposal of a short list proposer that
2 accepts the stipulated fee.

3 Sec. 6. Title 28, chapter 20, article 13, Arizona Revised Statutes, is
4 amended by adding sections 28-7366 and 28-7367, to read:

5 28-7366. Construction-manager-at-risk construction services and
6 job-order-contracting construction services

7 A. THE DEPARTMENT MAY PROCURE THE FOLLOWING SERVICES PURSUANT TO THIS
8 SECTION:

9 1. CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES.

10 2. JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES.

11 B. THE DEPARTMENT SHALL PROVIDE NOTICE OF EACH PROCUREMENT OF
12 CONSTRUCTION SERVICES PRESCRIBED IN THIS SECTION AND SHALL AWARD CONTRACTS ON
13 THE BASIS OF DEMONSTRATED COMPETENCE AND QUALIFICATIONS FOR THE TYPE OF
14 CONSTRUCTION SERVICES PURSUANT TO THE PROCEDURES PRESCRIBED IN THIS SECTION.

15 C. IN THE PROCUREMENT OF CONSTRUCTION SERVICES PURSUANT TO THIS
16 SECTION:

17 1. THE DEPARTMENT SHALL ISSUE A REQUEST FOR QUALIFICATIONS FOR EACH
18 CONTRACT AND PUBLISH NOTICE OF THE REQUEST FOR QUALIFICATIONS IN THE SAME
19 MANNER AS PROVIDED IN SECTION 28-6923. THE REQUEST FOR QUALIFICATIONS SHALL:

20 (a) INCLUDE THE NUMBER OF PERSONS OR FIRMS TO BE INCLUDED ON THE FINAL
21 LIST. AT LEAST THREE BUT NOT MORE THAN FIVE PERSONS OR FIRMS SHALL BE ON THE
22 FINAL LIST.

23 (b) STATE THE CRITERIA TO BE USED BY THE SELECTION TEAM TO SELECT THE
24 PERSON OR FIRM TO PERFORM THE CONSTRUCTION SERVICES. THE REQUEST FOR
25 QUALIFICATIONS SHALL ALSO STATE IN A MANNER DETERMINED BY THE DEPARTMENT THE
26 RELATIVE WEIGHT OF THE SELECTION CRITERIA.

27 (c) IF THE DEPARTMENT WILL HOLD INTERVIEWS AS PART OF THE SELECTION
28 PROCESS, STATE THAT INTERVIEWS SHALL BE HELD WITH AT LEAST THE NUMBER OF
29 PERSONS OR FIRMS TO BE INCLUDED IN THE FINAL LIST BUT NOT MORE THAN THE
30 NUMBER OF PERSONS OR FIRMS TO BE INCLUDED IN THE FINAL LIST PLUS TWO.

31 2. FOR EACH REQUEST FOR QUALIFICATIONS, THE DEPARTMENT SHALL INITIATE
32 A SELECTION TEAM PURSUANT TO SECTION 28-7365, SUBSECTION B. A PERSON WHO IS
33 A MEMBER OF A SELECTION TEAM SHALL NOT BE A CONTRACTOR UNDER THE CONTRACT OR
34 PROVIDE CONSTRUCTION, CONSTRUCTION SERVICES, MATERIALS OR SERVICES UNDER THE
35 CONTRACT. THE SELECTION TEAM SHALL:

36 (a) EVALUATE THE STATEMENTS OF QUALIFICATIONS AND PERFORMANCE DATA
37 THAT ARE SUBMITTED IN RESPONSE TO THE DEPARTMENT'S REQUEST FOR
38 QUALIFICATIONS.

39 (b) IF DETERMINED BY THE DEPARTMENT AND INCLUDED BY THE DEPARTMENT IN
40 THE REQUEST FOR QUALIFICATIONS, CONDUCT INTERVIEWS WITH THE NUMBER OF PERSONS
41 OR FIRMS TO BE INTERVIEWED AS STATED IN THE REQUEST FOR QUALIFICATIONS
42 REGARDING THE CONTRACT AND THE RELATIVE METHODS OF APPROACH FOR FURNISHING
43 THE REQUIRED CONSTRUCTION SERVICES.

1 (c) AFTER ANY INTERVIEWS, IN ORDER OF PREFERENCE, BASED ON THE
2 CRITERIA AND THE WEIGHTING OF CRITERIA ESTABLISHED AND PUBLISHED BY THE
3 DEPARTMENT AND INCLUDED IN THE REQUEST FOR QUALIFICATIONS, SELECT A FINAL
4 LIST FOR THE CONTRACT OF PERSONS OR FIRMS THE SELECTION TEAM DEEMS TO BE THE
5 MOST QUALIFIED TO PROVIDE THE CONSTRUCTION SERVICES AND, IN THE CASE OF A
6 CONTRACT THAT WILL BE NEGOTIATED UNDER SUBSECTION E OF THIS SECTION, RANK THE
7 PERSONS OR FIRMS ON THE FINAL LIST IN ORDER OF PREFERENCE. THE SELECTION
8 TEAM SHALL BASE THE SELECTION OF THE FINAL LIST AND THE ORDER OF PREFERENCE
9 ON DEMONSTRATED COMPETENCE AND QUALIFICATIONS ONLY. THE NUMBER OF PERSONS OR
10 FIRMS ON THE FINAL LIST SHALL BE THE NUMBER OF PERSONS OR FIRMS SPECIFIED IN
11 THE REQUEST FOR QUALIFICATIONS, EXCEPT THAT:

12 (i) IF A SMALLER NUMBER OF RESPONSIVE AND RESPONSIBLE PERSONS OR FIRMS
13 RESPOND TO THE SOLICITATION, THE DEPARTMENT MAY HAVE THE SELECTION TEAM
14 PROCEED WITH THE SELECTION PROCESS, INCLUDING INTERVIEWS AND THE FINAL LIST,
15 WITH THE REMAINING PERSONS OR FIRMS IF AT LEAST TWO PERSONS OR FIRMS REMAIN
16 OR THE DEPARTMENT MAY READVERTISE PURSUANT TO THIS SUBSECTION AS THE
17 DEPARTMENT DEEMS NECESSARY OR APPROPRIATE.

18 (ii) IF ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR FIRM RESPONDS TO
19 A SOLICITATION FOR A CONTRACT TO BE NEGOTIATED PURSUANT TO SUBSECTION E OF
20 THIS SECTION, THE DEPARTMENT MAY PROCEED WITH ONLY ONE PERSON OR FIRM IN THE
21 SELECTION PROCESS AND MAY AWARD THE CONTRACT TO A SINGLE PERSON OR FIRM IF
22 THE DEPARTMENT DETERMINES IN WRITING THAT THE FEE NEGOTIATED PURSUANT TO
23 SUBSECTION E OF THIS SECTION IS FAIR AND REASONABLE AND THAT EITHER OTHER
24 PROSPECTIVE PERSONS OR FIRMS HAD REASONABLE OPPORTUNITY TO RESPOND OR THERE
25 IS NOT ADEQUATE TIME FOR A RESOLICITATION.

26 (iii) IF A PERSON OR FIRM ON THE FINAL LIST WITHDRAWS OR IS REMOVED
27 FROM THE SELECTION PROCESS AND THE SELECTION TEAM DETERMINES THAT IT IS IN
28 THE BEST INTEREST OF THE DEPARTMENT, THE SELECTION TEAM MAY REPLACE THAT
29 PERSON OR FIRM WITH THE PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS AND THAT
30 IS SELECTED BY THE SELECTION TEAM AS THE NEXT MOST QUALIFIED.

31 (d) BASE THE SELECTION OF THE FINAL LIST AND ORDER OF PREFERENCE ON
32 THE FINAL LIST ON DEMONSTRATED COMPETENCE AND QUALIFICATIONS ONLY.

33 3. THE DEPARTMENT AND THE SELECTION TEAM SHALL NOT REQUEST OR CONSIDER
34 FEES, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION AT ANY POINT IN THE
35 SELECTION PROCESS UNDER THIS SUBSECTION OR SUBSECTION D OF THIS SECTION,
36 INCLUDING THE SELECTION OF THE PERSONS OR FIRMS TO BE INTERVIEWED, THE
37 SELECTION OF THE PERSONS OR FIRMS TO BE ON THE FINAL LIST, IN DETERMINING THE
38 ORDER OF PREFERENCE OF PERSONS OR FIRMS ON THE FINAL LIST OR FOR ANY OTHER
39 PURPOSE IN THE SELECTION PROCESS.

40 4. FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES THE CONTRACT
41 UNDER A REQUEST FOR QUALIFICATIONS SOLICITATION IS LIMITED TO A SPECIFIC
42 SINGLE PROJECT.

43 D. THE DEPARTMENT SHALL AWARD A CONTRACT FOR CONSTRUCTION SERVICES TO
44 ONE OF THE PERSONS OR FIRMS ON THE FINAL LIST PREPARED PURSUANT TO SUBSECTION
45 C OF THIS SECTION AS PROVIDED IN SUBSECTION E OR F OF THIS SECTION, EXCEPT

1 THAT, IF FEWER THAN THE NUMBER OF PERSONS OR FIRMS ON THE FINAL LIST RESPOND
2 TO THE REQUEST FOR PROPOSALS PURSUANT TO SUBSECTION F OF THIS SECTION BUT AT
3 LEAST TWO PERSONS OR FIRMS ON THE FINAL LIST SUBMIT RESPONSIVE PROPOSALS, OR
4 IF ONE OR MORE OF THE PERSONS OR FIRMS ON THE FINAL LIST DROP OUT OF THE
5 SELECTION PROCESS PURSUANT TO SUBSECTION E OR F OF THIS SECTION:

6 1. IF THERE ARE THREE OR MORE REMAINING PERSONS OR FIRMS, THE
7 DEPARTMENT SHALL PROCEED WITH THE SELECTION PROCESS.

8 2. IF THERE ARE ONLY TWO REMAINING PERSONS OR FIRMS, AS THE DEPARTMENT
9 DEEMS NECESSARY AND APPROPRIATE, THE DEPARTMENT MAY PROCEED WITH THE
10 SELECTION PROCESS WITH THE TWO PERSONS OR FIRMS OR MAY TERMINATE THE
11 SELECTION PROCESS AND MAY READVERTISE PURSUANT TO SUBSECTION C OF THIS
12 SECTION.

13 3. IF THERE IS ONLY ONE REMAINING PERSON OR FIRM, THE DEPARTMENT MAY
14 AWARD THE CONTRACT TO A SINGLE PERSON OR FIRM IF THE DEPARTMENT DETERMINES IN
15 WRITING THAT THE FEE NEGOTIATED PURSUANT TO SUBSECTION E OF THIS SECTION IS
16 FAIR AND REASONABLE AND THAT EITHER OTHER PROSPECTIVE PERSONS OR FIRMS HAD
17 REASONABLE OPPORTUNITY TO RESPOND OR THERE IS NOT ADEQUATE TIME FOR A
18 RESOLICITATION.

19 E. FOR THE SINGLE CONTRACT INCLUDED IN THE REQUEST FOR QUALIFICATIONS,
20 THE DEPARTMENT SHALL ENTER INTO NEGOTIATIONS FOR THE CONTRACT WITH THE
21 HIGHEST QUALIFIED PERSON OR FIRM ON THE FINAL LIST FOR THE CONSTRUCTION
22 SERVICES. THE NEGOTIATIONS SHALL INCLUDE CONSIDERATION OF COMPENSATION AND
23 OTHER CONTRACT TERMS THAT THE DEPARTMENT DETERMINES TO BE FAIR AND REASONABLE
24 TO THE DEPARTMENT. IN MAKING THIS DECISION, THE DEPARTMENT SHALL TAKE INTO
25 ACCOUNT THE ESTIMATED VALUE, THE SCOPE, THE COMPLEXITY AND THE NATURE OF THE
26 CONSTRUCTION SERVICES TO BE RENDERED. IF THE DEPARTMENT IS NOT ABLE TO
27 NEGOTIATE A SATISFACTORY CONTRACT WITH THE HIGHEST QUALIFIED PERSON OR FIRM
28 ON THE FINAL LIST AT COMPENSATION AND ON OTHER CONTRACT TERMS THE DEPARTMENT
29 DETERMINES TO BE FAIR AND REASONABLE, THE DEPARTMENT SHALL FORMALLY TERMINATE
30 NEGOTIATIONS WITH THAT PERSON OR FIRM. THE DEPARTMENT MAY UNDERTAKE
31 NEGOTIATIONS WITH THE NEXT MOST QUALIFIED PERSON OR FIRM ON THE FINAL LIST IN
32 SEQUENCE UNTIL AN AGREEMENT IS REACHED OR A DETERMINATION IS MADE TO REJECT
33 ALL PERSONS OR FIRMS ON THE FINAL LIST. IF A CONTRACT FOR CONSTRUCTION
34 SERVICES IS ENTERED INTO PURSUANT TO THIS SUBSECTION:

35 1. IF THE CONTRACT IS FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION
36 SERVICES AND INCLUDES PRECONSTRUCTION SERVICES BY THE CONTRACTOR, THE
37 DEPARTMENT SHALL ENTER INTO A WRITTEN CONTRACT WITH THE CONTRACTOR FOR
38 PRECONSTRUCTION SERVICES UNDER WHICH THE DEPARTMENT SHALL PAY THE CONTRACTOR
39 A FEE FOR PRECONSTRUCTION SERVICES IN AN AMOUNT AGREED BY THE DEPARTMENT AND
40 THE CONTRACTOR, AND THE DEPARTMENT SHALL NOT REQUEST OR OBTAIN A FIXED PRICE
41 OR A GUARANTEED MAXIMUM PRICE FOR THE CONSTRUCTION FROM THE CONTRACTOR OR
42 ENTER INTO A CONSTRUCTION CONTRACT WITH THE CONTRACTOR UNTIL AFTER THE
43 DEPARTMENT HAS ENTERED INTO THE WRITTEN CONTRACT FOR PRECONSTRUCTION SERVICES
44 AND A PRECONSTRUCTION SERVICES FEE.

1 2. CONSTRUCTION SHALL NOT COMMENCE UNTIL THE DEPARTMENT AND CONTRACTOR
2 AGREE IN WRITING ON EITHER A FIXED PRICE THAT THE DEPARTMENT WILL PAY FOR THE
3 CONSTRUCTION TO BE COMMENCED OR A GUARANTEED MAXIMUM PRICE FOR THE
4 CONSTRUCTION TO BE COMMENCED.

5 F. AS AN ALTERNATIVE TO SUBSECTION E OF THIS SECTION, THE DEPARTMENT
6 MAY AWARD JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES AS FOLLOWS:

7 1. THE DEPARTMENT SHALL USE THE SELECTION TEAM THAT IS APPOINTED FOR
8 THE REQUEST FOR QUALIFICATIONS PURSUANT TO SUBSECTION C OF THIS SECTION.

9 2. THE DEPARTMENT SHALL ISSUE A REQUEST FOR PROPOSALS TO THE PERSONS
10 OR FIRMS ON THE FINAL LIST THAT IS DEVELOPED PURSUANT TO SUBSECTION C OF THIS
11 SECTION.

12 3. FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES, THE REQUEST FOR
13 PROPOSALS SHALL INCLUDE:

14 (a) THE DEPARTMENT'S PROJECT SCHEDULE AND PROJECT FINAL DESIGN AND
15 CONSTRUCTION BUDGET OR LIFE CYCLE BUDGET FOR A PROCUREMENT THAT INCLUDES
16 MAINTENANCE SERVICES OR OPERATIONS SERVICES.

17 (b) A STATEMENT THAT THE CONTRACT WILL BE AWARDED TO THE OFFEROR WHOSE
18 PROPOSAL RECEIVES THE HIGHEST NUMBER OF POINTS UNDER A SCORING METHOD.

19 (c) A DESCRIPTION OF THE SCORING METHOD, INCLUDING A LIST OF THE
20 FACTORS IN THE SCORING METHOD AND THE NUMBER OF POINTS ALLOCATED TO EACH
21 FACTOR.

22 (d) A REQUIREMENT THAT EACH OFFEROR SEPARATELY SUBMIT A TECHNICAL
23 PROPOSAL AND A PRICE PROPOSAL AND THAT THE OFFEROR'S ENTIRE PROPOSAL BE
24 RESPONSIVE TO THE REQUIREMENTS IN THE REQUEST FOR PROPOSALS.

25 (e) A STATEMENT THAT IN APPLYING THE SCORING METHOD THE SELECTION TEAM
26 WILL SEPARATELY EVALUATE THE TECHNICAL PROPOSAL AND THE PRICE PROPOSAL AND
27 WILL EVALUATE AND SCORE THE TECHNICAL PROPOSAL BEFORE OPENING THE PRICE
28 PROPOSAL.

29 (f) IF THE DEPARTMENT CONDUCTS DISCUSSIONS PURSUANT TO PARAGRAPH 5 OF
30 THIS SUBSECTION, A STATEMENT THAT DISCUSSIONS WILL BE HELD AND A REQUIREMENT
31 THAT EACH OFFEROR SUBMIT A PRELIMINARY TECHNICAL PROPOSAL BEFORE THE
32 DISCUSSIONS ARE HELD.

33 4. IF THE DEPARTMENT DETERMINES TO CONDUCT DISCUSSIONS PURSUANT TO
34 PARAGRAPH 5 OF THIS SUBSECTION, EACH OFFEROR SHALL SUBMIT A PRELIMINARY
35 TECHNICAL PROPOSAL TO THE DEPARTMENT BEFORE THOSE DISCUSSIONS ARE HELD.

36 5. IF DETERMINED BY THE DEPARTMENT AND INCLUDED BY THE DEPARTMENT IN
37 THE REQUEST FOR PROPOSALS, THE SELECTION TEAM SHALL CONDUCT DISCUSSIONS WITH
38 ALL PERSONS OR FIRMS THAT SUBMIT PRELIMINARY TECHNICAL PROPOSALS.
39 DISCUSSIONS SHALL BE FOR THE PURPOSE OF CLARIFICATION TO ASSURE FULL
40 UNDERSTANDING OF, AND RESPONSIVENESS TO, THE SOLICITATION REQUIREMENTS. THE
41 DEPARTMENT SHALL ACCORD FAIR TREATMENT TO OFFERORS WITH RESPECT TO ANY
42 OPPORTUNITY FOR DISCUSSION AND FOR CLARIFICATION BY THE OWNER. REVISION OF
43 PRELIMINARY TECHNICAL PROPOSALS SHALL BE PERMITTED AFTER SUBMISSION OF
44 PRELIMINARY TECHNICAL PROPOSALS AND BEFORE AWARD FOR THE PURPOSE OF OBTAINING
45 THE BEST AND FINAL PROPOSALS. IN CONDUCTING ANY DISCUSSIONS, INFORMATION

1 DERIVED FROM PROPOSALS SUBMITTED BY COMPETING OFFERORS SHALL NOT BE DISCLOSED
2 TO OTHER COMPETING OFFERORS.

3 6. AFTER COMPLETION OF ANY DISCUSSIONS PURSUANT TO PARAGRAPH 5 OF THIS
4 SUBSECTION OR IF NO DISCUSSIONS ARE HELD, EACH OFFEROR SHALL SEPARATELY
5 SUBMIT THE OFFEROR'S FINAL TECHNICAL PROPOSAL AND THE OFFEROR'S PRICE
6 PROPOSAL.

7 7. BEFORE OPENING ANY PRICE PROPOSAL, THE SELECTION TEAM SHALL OPEN
8 THE FINAL TECHNICAL PROPOSALS, EVALUATE THE FINAL TECHNICAL PROPOSALS AND
9 SCORE THE FINAL TECHNICAL PROPOSALS USING THE SCORING METHOD IN THE REQUEST
10 FOR PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION AND
11 SCORING.

12 8. AFTER COMPLETION OF THE EVALUATION AND SCORING OF ALL FINAL
13 TECHNICAL PROPOSALS, THE SELECTION TEAM SHALL OPEN THE PRICE PROPOSALS,
14 EVALUATE THE PRICE PROPOSALS, SCORE THE PRICE PROPOSALS AND COMPLETE THE
15 SCORING OF THE ENTIRE PROPOSALS USING THE SCORING METHOD IN THE REQUEST FOR
16 PROPOSALS. NO OTHER FACTORS OR CRITERIA MAY BE USED IN THE EVALUATION AND
17 SCORING.

18 9. THE DEPARTMENT SHALL AWARD THE CONTRACT TO THE RESPONSIVE AND
19 RESPONSIBLE OFFEROR WHOSE PROPOSAL RECEIVES THE HIGHEST SCORE UNDER THE
20 METHOD OF SCORING IN THE REQUEST FOR PROPOSALS. NO OTHER FACTORS OR CRITERIA
21 MAY BE USED IN THE EVALUATION.

22 10. THE CONTRACT FILE SHALL CONTAIN THE BASIS ON WHICH THE AWARD IS
23 MADE.

24 G. UNTIL AN AWARD AND EXECUTION OF A CONTRACT BY THE DEPARTMENT, ONLY
25 THE NAME OF EACH PERSON OR FIRM ON THE FINAL LIST DEVELOPED PURSUANT TO
26 SUBSECTION C OF THIS SECTION MAY BE MADE AVAILABLE TO THE PUBLIC. ALL OTHER
27 INFORMATION RECEIVED BY THE DEPARTMENT IN RESPONSE TO THE REQUEST FOR
28 QUALIFICATIONS OR CONTAINED IN THE PROPOSALS IS CONFIDENTIAL IN ORDER TO
29 AVOID DISCLOSURE OF THE CONTENTS THAT MAY BE PREJUDICIAL TO COMPETING
30 OFFERORS DURING THE SELECTION PROCESS. THE DEPARTMENT SHALL OPEN THE
31 PROPOSALS TO PUBLIC INSPECTION AFTER THE CONTRACT IS AWARDED AND THE
32 DEPARTMENT HAS EXECUTED THE CONTRACT. TO THE EXTENT THAT THE OFFEROR
33 DESIGNATES AND THE DEPARTMENT CONCURS, TRADE SECRETS AND OTHER PROPRIETARY
34 DATA CONTAINED IN A PROPOSAL REMAIN CONFIDENTIAL.

35 H. THE DEPARTMENT MAY CANCEL A REQUEST FOR QUALIFICATIONS OR A REQUEST
36 FOR PROPOSALS OR REJECT IN WHOLE OR IN PART ANY OR ALL PROPOSALS AS SPECIFIED
37 IN THE SOLICITATION IF IT IS IN THE BEST INTEREST OF THE DEPARTMENT. THE
38 DEPARTMENT SHALL MAKE THE REASONS FOR CANCELLATION OR REJECTION PART OF THE
39 CONTRACT FILE.

40 I. NOTWITHSTANDING ANY OTHER LAW:

41 1. THE CONTRACTOR FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES IS
42 NOT REQUIRED TO BE REGISTERED TO PERFORM DESIGN SERVICES PURSUANT TO TITLE
43 32, CHAPTER 1 IF THE PERSON OR FIRM ACTUALLY PERFORMING THE DESIGN SERVICES
44 ON BEHALF OF THE CONTRACTOR IS APPROPRIATELY REGISTERED.

1 2. THE CONTRACTOR FOR CONSTRUCTION-MANAGER-AT-RISK OR
2 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES SHALL BE LICENSED TO PERFORM
3 CONSTRUCTION PURSUANT TO TITLE 32, CHAPTER 10.

4 3. FOR EACH PROJECT UNDER A CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION
5 SERVICES CONTRACT, THE LICENSED CONTRACTOR PERFORMING THE CONTRACT SHALL
6 PERFORM, WITH THE CONTRACTOR'S OWN ORGANIZATION, CONSTRUCTION WORK THAT
7 AMOUNTS TO NOT LESS THAN FORTY PER CENT OF THE TOTAL CONTRACT PRICE FOR
8 CONSTRUCTION. FOR THE PURPOSES OF THIS PARAGRAPH, THE TOTAL CONTRACT PRICE
9 FOR CONSTRUCTION DOES NOT INCLUDE THE COST OF PRECONSTRUCTION SERVICES,
10 DESIGN SERVICES OR ANY OTHER RELATED SERVICES OR THE COST TO PROCURE ANY
11 RIGHT-OF-WAY OR OTHER COST OF CONDEMNATION.

12 4. THERE SHALL BE A SEPARATE REQUEST FOR QUALIFICATIONS UNDER
13 SUBSECTION C OF THIS SECTION FOR EACH CONTRACT FOR
14 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR JOB-ORDER-CONTRACTING
15 CONSTRUCTION SERVICES.

16 5. THE DEPARTMENT SHALL NOT PROCURE ANY CONSTRUCTION SERVICES USING
17 THE CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR
18 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES METHOD OF PROJECT DELIVERY AFTER
19 DECEMBER 31, 2025. FOR THE PURPOSES OF THIS PARAGRAPH, THE DEPARTMENT
20 PROCURES CONSTRUCTION SERVICES WHEN THE DEPARTMENT SOLICITS THE CONTRACT FOR
21 CONSTRUCTION SERVICES. IF THE DEPARTMENT SOLICITS A CONTRACT FOR
22 CONSTRUCTION SERVICES ON OR BEFORE DECEMBER 31, 2025, THE CONTRACT MAY BE
23 EXECUTED AND CONSTRUCTION SERVICES UNDER THE CONTRACT MAY BE RENDERED IN
24 WHOLE OR IN PART AFTER DECEMBER 31, 2025.

25 J. FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES ONLY:

26 1. THE MAXIMUM DOLLAR AMOUNT OF AN INDIVIDUAL JOB ORDER SHALL BE ONE
27 MILLION DOLLARS OR SUCH HIGHER OR LOWER AMOUNT PRESCRIBED BY THE DEPARTMENT.
28 REQUIREMENTS SHALL NOT BE ARTIFICIALLY DIVIDED OR FRAGMENTED IN ORDER TO
29 CONSTITUTE A JOB ORDER THAT SATISFIES THIS REQUIREMENT.

30 2. IF THE CONTRACTOR SUBCONTRACTS OR INTENDS TO SUBCONTRACT ANY OF THE
31 WORK UNDER A JOB ORDER AND IF THE JOB-ORDER-CONSTRUCTION SERVICES CONTRACT
32 INCLUDES DESCRIPTIONS OF STANDARD INDIVIDUAL TASKS, STANDARD UNIT PRICES FOR
33 STANDARD INDIVIDUAL TASKS AND PRICING OF JOB ORDERS BASED ON THE NUMBER OF
34 UNITS OF STANDARD INDIVIDUAL TASKS IN THE JOB ORDER:

35 (a) THE CONTRACTOR HAS A DUTY TO DELIVER PROMPTLY TO EACH
36 SUBCONTRACTOR INVITED TO BID A COEFFICIENT TO THE CONTRACTOR TO DO ALL OR
37 PART OF THE WORK UNDER ONE OR MORE JOB ORDERS:

38 (i) A COPY OF THE DESCRIPTIONS OF ALL STANDARD INDIVIDUAL TASKS ON
39 WHICH THE SUBCONTRACTOR IS INVITED TO BID.

40 (ii) A COPY OF THE STANDARD UNIT PRICES FOR THE INDIVIDUAL TASKS ON
41 WHICH THE SUBCONTRACTOR IS INVITED TO BID.

42 (b) IF NOT PREVIOUSLY DELIVERED TO THE SUBCONTRACTOR, THE CONTRACTOR
43 HAS A DUTY TO DELIVER PROMPTLY THE FOLLOWING TO EACH SUBCONTRACTOR INVITED TO
44 , OR THAT HAS AGREED TO DO ANY OF THE WORK INCLUDED IN ANY JOB ORDER:

1 (i) A COPY OF THE DESCRIPTION OF EACH STANDARD INDIVIDUAL TASK THAT IS
2 INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO PERFORM.

3 (ii) THE NUMBER OF UNITS OF EACH STANDARD INDIVIDUAL TASK THAT IS
4 INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO PERFORM.

5 (iii) THE STANDARD UNIT PRICE FOR EACH STANDARD INDIVIDUAL TASK THAT
6 IS INCLUDED IN THE JOB ORDER AND THAT THE SUBCONTRACTOR IS INVITED TO
7 PERFORM.

8 K. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS TITLE, THE
9 DEPARTMENT SHALL NOT ENTER INTO A CONTRACT AS CONTRACTOR TO PROVIDE
10 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR JOB-ORDER-CONTRACTING
11 CONSTRUCTION SERVICES.

12 L. EACH CONTRACT FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION
13 SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES SHALL CONTAIN A
14 DESCRIPTION OF EACH SEPARATE LOCATION AT WHICH THE CONSTRUCTION WILL BE
15 PERFORMED AND A REQUIREMENT THAT THE CONTRACTOR INCLUDE IN EACH OF THE
16 CONTRACTOR SUBCONTRACTS THE SAME LOCATION DESCRIPTION. THE CONTRACTOR SHALL
17 INCLUDE IN EACH SUBCONTRACT A DESCRIPTION OF EACH SEPARATE LOCATION AT WHICH
18 THE CONSTRUCTION WILL BE PERFORMED.

19 M. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, SECTIONS 28-6923 AND
20 28-6924, RELATING TO BID, PERFORMANCE AND PAYMENT BONDS, CHANGE ORDERS,
21 PROGRESS PAYMENTS, CONTRACT RETENTION, DEFINITIONS AND AUTHORITY TO AWARD
22 CONTRACTS, APPLY TO DEPARTMENT CONSTRUCTION MANAGER-AT-RISK AND
23 JOB-ORDER-CONTRACTING CONTRACTS FOR TRANSPORTATION FACILITIES PURSUANT TO
24 THIS ARTICLE.

25 28-7367. Multiterm contracts for job-order-contracting
26 construction services

27 A. A CONTRACT FOR CONSTRUCTION SERVICES USING THE
28 JOB-ORDER-CONTRACTING METHOD MAY BE ENTERED INTO FOR A PERIOD OF UP TO FIVE
29 YEARS, AS DEEMED TO BE IN THE BEST INTEREST OF THE DEPARTMENT, IF THE TERM OF
30 THE CONTRACT AND CONDITIONS OF RENEWAL OR EXTENSION, IF ANY, ARE INCLUDED IN
31 THE SOLICITATION AND MONIES ARE AVAILABLE FOR THE FIRST FISCAL YEAR AT THE
32 TIME OF CONTRACTING. PAYMENT AND PERFORMANCE OBLIGATIONS FOR SUCCEEDING
33 FISCAL YEARS ARE SUBJECT TO THE AVAILABILITY AND APPROPRIATION OF MONIES.

34 B. BEFORE THE USE OF A MULTITERM CONTRACT, THE DEPARTMENT SHALL
35 DETERMINE IN WRITING THAT:

36 1. ESTIMATED REQUIREMENTS COVER THE PERIOD OF THE CONTRACT AND ARE
37 REASONABLE AND CONTINUING.

38 2. THE CONTRACT SERVES THE BEST INTERESTS OF THE DEPARTMENT BY
39 ENCOURAGING EFFECTIVE COMPETITION OR OTHERWISE PROMOTING ECONOMIES IN THE
40 DEPARTMENT'S PROCUREMENT.

41 C. IF MONIES ARE NOT APPROPRIATED OR OTHERWISE MADE AVAILABLE TO
42 SUPPORT THE CONTINUATION OF PERFORMANCE IN A SUBSEQUENT FISCAL YEAR, THE
43 CONTRACT SHALL BE CANCELED AND THE CONTRACTOR MAY ONLY BE REIMBURSED FOR THE
44 REASONABLE VALUE OF ANY NONRECURRING COSTS THAT ARE INCURRED BUT NOT
45 AMORTIZED IN THE PRICE OF THE CONSTRUCTION SERVICES DELIVERED UNDER THE

1 CONTRACT OR THAT ARE OTHERWISE NOT RECOVERABLE. THE COST OF CANCELLATION MAY
2 BE PAID FROM ANY APPROPRIATIONS AVAILABLE FOR THESE PURPOSES. CONTRACTORS
3 ARE NOT ENTITLED TO COMPENSATION FOR A DECISION TO NOT RENEW OR EXTEND A
4 CONTRACT.

5 Sec. 7. Section 34-101, Arizona Revised Statutes, is amended to read:

6 34-101. Definitions

7 In this title, unless the context otherwise requires:

8 1. "Agent":

9 (a) Means any county, city or town, or officer, board or commission
10 thereof, and irrigation, power, electrical, drainage and flood control
11 districts, tax levying public improvement districts, and county or city
12 improvement districts.

13 (b) Includes any county board of supervisors and any representative
14 authorized by an agent to act as an agent for the purpose of authorizing
15 necessary change orders to previously awarded contracts in accordance with
16 guidelines established by rule of the agent, including the board of
17 supervisors.

18 2. "Architect services" means those professional architect services
19 that are within the scope of architectural practice as provided in title 32,
20 chapter 1.

21 3. "Construction":

22 (a) Means the process of building, altering, repairing, improving or
23 demolishing any public structure or building or other public improvements of
24 any kind to any public real property.

25 (b) Does not include the routine operation, routine repair or routine
26 maintenance of existing facilities, structures, buildings or real property or
27 demolition projects costing less than two hundred thousand dollars.

28 4. "Construction-manager-at-risk" means a project delivery method in
29 which:

30 (a) There is a separate contract for design services and a separate
31 contract for construction services.

32 (b) The contract for construction services may be entered into at the
33 same time as the contract for design services or at a later time.

34 (c) Design and construction of the project may be in sequential phases
35 or concurrent phases.

36 (d) Finance services, maintenance services, operations services,
37 preconstruction services and other related services may be included.

38 5. "Construction services" means either of the following for
39 construction-manager-at-risk, design-build and job-order-contracting project
40 delivery methods:

41 (a) Construction, excluding services, through the
42 construction-manager-at-risk or job-order-contracting project delivery
43 methods.

1 (b) A combination of construction and, as elected by the agent, one or
2 more related services, such as finance services, maintenance services,
3 operations services, design services and preconstruction services, as those
4 services are authorized in the definitions of construction-manager-at-risk,
5 design-build or job-order-contracting in this section.

6 6. "Contract" means all types of agent agreements, regardless of what
7 they are called, for the procurement of services pursuant to this title.

8 7. "Contractor" means any person who has a contract with an agent.

9 8. "Design-bid-build" means a project delivery method in which:

10 (a) There is a sequential award of two separate contracts.

11 (b) The first contract is for design services.

12 (c) The second contract is for construction.

13 (d) Design and construction of the project are in sequential phases.

14 (e) Finance services, maintenance services and operations services are
15 not included.

16 9. "Design-build" means a project delivery method in which:

17 (a) There is a single contract for design services and construction
18 services.

19 (b) Design and construction of the project may be in sequential phases
20 or concurrent phases.

21 (c) Finance services, maintenance services, operations services,
22 preconstruction services and other related services may be included.

23 10. "Design requirements":

24 (a) Means at a minimum the agent's written description of the project
25 or service to be procured, including:

26 (i) The required features, functions, characteristics, qualities and
27 properties.

28 (ii) The anticipated schedule, including start, duration and
29 completion.

30 (iii) The estimated budgets applicable to the specific procurement for
31 design and construction and, if applicable, for operation and maintenance.

32 (b) May include:

33 (i) Drawings and other documents illustrating the scale and
34 relationship of the features, functions and characteristics of the project,
35 which shall all be prepared by an architect or engineer, as appropriate, who
36 is registered pursuant to section 32-121.

37 (ii) Additional design information or documents that the agent elects
38 to include.

39 11. "Design services" means architect services, engineer services or
40 landscape architect services.

41 12. "Direct selection" means the selection of a technical registrant
42 without the requirement of advertising or the use of a current register.

43 13. "Engineer services" means those professional engineer services that
44 are within the scope of engineering practice as provided in title 32,
45 chapter 1.

1 14. "Finance services" means financing for a construction services
2 project.

3 15. "Horizontal construction" means highways, roads, streets, bridges,
4 canals, floodways, earthen dams and landfills.

5 16. "Job-order-contracting" means a project delivery method in which:
6 (a) The contract is a requirements contract for indefinite quantities
7 of construction.

8 (b) The construction to be performed is specified in job orders issued
9 during the contract.

10 (c) Finance services, maintenance services, operations services,
11 preconstruction services, design services and other related services may be
12 included.

13 17. "Landscape architect services" means those professional landscape
14 architect services that are within the scope of landscape architectural
15 practice as provided in title 32, chapter 1.

16 18. "Maintenance services" means routine maintenance, repair and
17 replacement of existing facilities, structures, buildings or real property.

18 19. "Materials":

19 (a) Means all property, including equipment, supplies, printing,
20 insurance and leases of property.

21 (b) Does not include land, a permanent interest in land or real
22 property or leasing space.

23 20. "Operations services" means routine operation of existing
24 facilities, structures, buildings or real property.

25 21. "Person" means any corporation, business, individual, union,
26 committee, club, other organization or group of individuals.

27 22. "Preconstruction services" means advice during the design phase.

28 23. "Procurement":

29 (a) Means buying, purchasing, renting, leasing or otherwise acquiring
30 any materials, services, construction or construction services.

31 (b) Includes all functions that pertain to obtaining any material,
32 services, construction or construction services, including description of
33 requirements, selection and solicitation of sources, preparation and award of
34 contract and all phases of contract administration.

35 24. "Public competition" means a competitive procurement process
36 pursuant to section 34-103, subsection G that includes advertising in a
37 public newspaper and a qualification-based selection process.

38 25. "Services":

39 (a) Means the furnishing of labor, time or effort by a contractor or
40 subcontractor that does not involve the delivery of a specific end product
41 other than required reports and performance.

42 (b) Does not include employment agreements or collective bargaining
43 agreements.

1 26. "SPECIFIC SINGLE PROJECT" MEANS ONE OR MORE FACILITIES AT A SINGLE
2 LOCATION, AT A COMMON LOCATION OR, IF FOR A SIMILAR PURPOSE, AT MULTIPLE
3 LOCATIONS.

4 ~~26.~~ 27. "Subcontractor" means a person who contracts to perform work
5 or render service to a contractor or to another subcontractor as a part of a
6 contract with an agent.

7 ~~27.~~ 28. "Technical registrant" means a person who provides any of the
8 professional services listed in title 32, chapter 1.

9 Sec. 8. Section 34-102, Arizona Revised Statutes, is amended to read:

10 34-102. Multiple contracts

11 A. FOR PROFESSIONAL SERVICES THAT ARE PROVIDED BY A TECHNICAL
12 REGISTRANT, an agent may PROCURE AND award multiple contracts from a single
13 solicitation ~~for all contracts for professional services provided by~~
14 ~~technical registrants~~ UNDER SECTION 34-103 OR 34-603, AS APPLICABLE, except
15 for THAT PROFESSIONAL services ~~provided under the~~ THAT ARE PART OF
16 design-build or ~~construction manager at risk project delivery methods~~
17 CONSTRUCTION SERVICES MAY NOT BE PROCURED UNDER THIS SUBSECTION. EACH OF THE
18 MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES MUST HAVE A TERM NOT EXCEEDING
19 FIVE YEARS AND MAY CONTINUE IN EFFECT AFTER THE FIVE YEAR TERM FOR
20 PROFESSIONAL SERVICES ON PROJECTS COMMENCED WITHIN THE FIVE YEAR TERM.

21 ~~B. Agents shall procure multiple contracts for job order contracting~~
22 ~~construction services contracts pursuant to chapter 6 of this title.~~

23 ~~C. If a solicitation for multiple contracts is published, the~~
24 ~~publication shall include the fact that multiple contracts may or will be~~
25 ~~awarded.~~

26 B. IN A SOLICITATION FOR MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES
27 BY TECHNICAL REGISTRANTS:

28 1. ANY PUBLICATION SHALL INCLUDE THE FACT THAT MULTIPLE CONTRACTS MAY
29 OR WILL BE AWARDED, SHALL STATE THE NUMBER OF CONTRACTS THAT MAY OR WILL BE
30 AWARDED AND SHALL DESCRIBE THE SERVICES TO BE PERFORMED UNDER EACH CONTRACT.
31 IF THE SOLICITATION IS UNDER SECTION 34-603, SUBSECTION C, THE REQUEST FOR
32 QUALIFICATIONS SHALL ALSO CONTAIN THIS INFORMATION.

33 2. THERE SHALL BE A SINGLE SELECTION PROCESS FOR ALL OF THE MULTIPLE
34 CONTRACTS, EXCEPT THAT IF THE SOLICITATION IS UNDER SECTION 34-103,
35 SUBSECTIONS E AND F OR UNDER SECTION 34-603, SUBSECTION C THERE SHALL BE A
36 SEPARATE FINAL LIST FOR EACH CONTRACT AND A SEPARATE CONTRACT NEGOTIATION FOR
37 EACH CONTRACT. HOWEVER, IF THE SOLICITATION SPECIFIES THAT ALL OF THE
38 MULTIPLE CONTRACTS WILL BE AWARDED TO A SINGLE CONTRACTOR, THERE MAY BE A
39 SINGLE FINAL LIST AND A SINGLE NEGOTIATION FOR ALL OF THE MULTIPLE CONTRACTS.

40 3. THE AGENT MAY AWARD ALL OF THE MULTIPLE CONTRACTS TO ONE CONTRACTOR
41 OR MAY AWARD THE MULTIPLE CONTRACTS TO MULTIPLE CONTRACTORS.

42 C. EXCEPT FOR HORIZONTAL CONSTRUCTION, MULTIPLE CONTRACTS FOR
43 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES, DESIGN-BUILD CONSTRUCTION
44 SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES MAY BE PROCURED IN A
45 SINGLE SOLICITATION AS PROVIDED IN SECTION 34-603, SUBSECTION C.

1 Sec. 9. Section 34-103, Arizona Revised Statutes, is amended to read:

2 34-103. Employment of technical registrants for work on public
3 buildings and structures; direct selection; final
4 list selection; public competition

5 A. An agent shall procure professional services from a technical
6 registrant in the manner prescribed in chapter 6 of this title if either of
7 the following applies:

8 1. The contract is with a technical registrant other than an architect
9 and is for an amount of more than five hundred thousand dollars.

10 2. The contract is with an architect and is for an amount of more than
11 two hundred fifty thousand dollars.

12 B. An agent may procure professional services from a technical
13 registrant in the manner prescribed in chapter 6 of this title or as
14 prescribed in subsection D if either of the following applies:

15 1. The contract is with a technical registrant other than an architect
16 and is for an amount of five hundred thousand dollars or less.

17 2. The contract is with an architect and is for an amount of two
18 hundred fifty thousand dollars or less.

19 C. If authority is given by law to an agent to construct a building or
20 structure, or additions to or alterations of existing buildings, an agent
21 shall employ an architect or engineer, or both, as warranted by the type of
22 construction, if the agent deems the work to be of a nature that requires
23 such employment.

24 D. An agent may employ a technical registrant by direct selection, by
25 public competition pursuant to subsection G or pursuant to subsections E and
26 F if either of the following applies:

27 1. The contract is with a technical registrant other than an architect
28 and is for an amount of five hundred thousand dollars or less.

29 2. The contract is with an architect and is for an amount of two
30 hundred fifty thousand dollars or less.

31 E. The agent may elect to employ a technical registrant by encouraging
32 persons or firms engaged in the lawful practice of the profession to submit
33 annually a statement of qualifications and experience. If the agent elects
34 to employ a technical registrant by this method, the agent shall initiate an
35 appropriately qualified selection committee for each ~~contract~~ PROCUREMENT,
36 WHICH MAY INCLUDE ONE OR MORE CONTRACTS, in accordance with rules adopted by
37 the agent. The selection committee shall evaluate current statements of
38 qualifications and experience on file with the agent together with those that
39 may be submitted by other persons or firms regarding the ~~proposed contract~~
40 PROCUREMENT. If possible and practicable, the selection committee shall
41 conduct ~~discussions~~ INTERVIEWS with at least three persons or firms regarding
42 the ~~contract~~ PROCUREMENT and the relative methods of furnishing the required
43 services and, if possible, shall select, in order of preference and based on
44 criteria established and published by the selection committee, a ~~short~~
45 SEPARATE FINAL list FOR EACH CONTRACT BEING PROCURED of at least three of the

1 persons or firms deemed to be the most qualified to provide the services
2 required. The selection committee--

3 1- shall base the selection of the ~~short~~ EACH FINAL list and THE order
4 of preference ON EACH FINAL LIST on demonstrated competence and
5 qualifications only. THE AGENT AND THE SELECTION COMMITTEE

6 2- shall not request or consider fees, price, man-hours or any other
7 cost information ~~in~~ AT ANY POINT IN THE SELECTION PROCESS UNDER THIS
8 SUBSECTION, INCLUDING the selection of the ~~short list or~~ PERSONS OR FIRMS TO
9 BE INTERVIEWED, THE SELECTION OF THE PERSONS AND FIRMS TO BE ON A FINAL LIST,
10 IN DETERMINING THE order of preference OF PERSONS AND FIRMS ON A FINAL LIST
11 OR FOR ANY OTHER PURPOSE IN THE SELECTION PROCESS.

12 F. After a ~~short~~ FINAL list is selected FOR EACH CONTRACT INCLUDED IN
13 THE PROCUREMENT, the agent shall enter into SEPARATE negotiations for a
14 contract with the ~~most~~ HIGHEST qualified person or firm ON THE FINAL LIST FOR
15 THE CONTRACT DETERMINED UNDER SUBSECTION E for the professional services. The
16 negotiations shall include consideration of compensation and other contract
17 terms that the agent determines to be fair and reasonable to the agent. In
18 making this determination, the agent shall take into account the estimated
19 value, the scope, the complexity and the nature of the professional services
20 to be rendered. If the agent is not able to negotiate a satisfactory
21 contract with the HIGHEST QUALIFIED person or firm ~~considered by the agent to~~
22 ~~be the most qualified~~ ON THE FINAL LIST FOR THE CONTRACT at a price and on
23 other contract terms the agent determines to be fair and reasonable, the
24 agent shall formally terminate negotiations with that person or firm. The
25 agent may enter into negotiations with the next most qualified person or firm
26 ON THE FINAL LIST FOR THE CONTRACT in sequence until an agreement is reached
27 or a determination is made to reject all persons or firms on the ~~short~~ FINAL
28 list FOR THE CONTRACT.

29 G. If competitive designs are solicited, the agent shall publish
30 notice of the competition at least thirty days before the date set for
31 closing the competition. The notice shall include the following:

- 32 1. The project title and description.
33 2. The design and construction budget.
34 3. The competitive process and criteria to be used to select the
35 winning offeror.
36 4. The amount of the stipend to be paid to the unsuccessful offerors.
37 5. The offerors' response date.
38 6. The person to contact to obtain additional information regarding
39 the competition.

40 7. Any other requirements established by the agent as appropriate.
41 Sec. 10. Section 34-602, Arizona Revised Statutes, is amended to read:
42 34-602. Project delivery methods for design and construction
43 services

44 A. An agent may procure design services, construction and construction
45 services, as applicable, under any of the following project delivery methods:

1 1. Design-bid-build.

2 2. Construction-manager-at-risk.

3 3. Design-build.

4 4. Job-order-contracting.

5 B. Except as provided in section 41-2501, subsection C and section
6 41-2535, subsection D, for the design-bid-build project delivery method, the
7 agent shall procure:

8 1. Design services as provided in this chapter and chapter 1, article
9 1 of this title.

10 2. Construction by competitive sealed bidding pursuant to chapter 2,
11 articles 1, 2 and 3 of this title and pursuant to rules adopted by the agent
12 pursuant to section 41-2501, subsection C.

13 C. An agent shall procure construction services under the
14 construction-manager-at-risk, design-build and job-order-contracting project
15 delivery methods pursuant to this chapter.

16 D. An agent shall procure design services relating to
17 construction-manager-at-risk construction services projects pursuant to
18 section 34-103 or 34-603, as applicable.

19 E. For job-order-contracting construction services projects, if the
20 agent does not include design services in the job-order-contracting
21 construction services contract, the agent shall procure any design services
22 relating to the job-order-contracting construction services projects under
23 the contract pursuant to section 34-103 or 34-603, as applicable.

24 ~~F. On or before January 15 of each year, any agent that uses~~
25 ~~construction-manager-at-risk, design-build or job-order-contracting to~~
26 ~~procure construction services shall submit a report to the secretary of state~~
27 ~~on the benefits associated with the use of the procurement methods. The~~
28 ~~report shall include the number of projects completed in the preceding~~
29 ~~calendar year using the procurement methods, the cost and description of each~~
30 ~~project and an estimate of any cost savings or other benefits realized~~
31 ~~through the use of that procurement method.~~

32 Sec. 11. Section 34-603, Arizona Revised Statutes, is amended to read:

33 34-603. Procurement of professional services and
34 construction-manager-at-risk, design-build and
35 job-order-contracting construction services;
36 definition

37 A. Except for services an agent procures pursuant to section 34-103 or
38 34-604, an agent shall procure the following services pursuant to this
39 section:

40 1. Architect services.

41 2. Construction-manager-at-risk construction services.

42 3. Design-build construction services.

43 4. Engineer services.

44 5. Job-order-contracting construction services.

45 6. Landscape architect services.

1 7. Assayer services.

2 8. Geologist services.

3 9. Land surveying services.

4 B. An agent shall provide notice of each procurement of professional
5 services or construction services specified in this section and shall award
6 contracts on the basis of demonstrated competence and qualifications for the
7 type of professional services or construction services pursuant to the
8 procedures prescribed in this section.

9 C. In the procurement of professional services or construction
10 services pursuant to this section, ~~an agent shall:~~

11 1. AN AGENT SHALL issue a request for qualifications for each contract
12 and publish notice of the request for qualifications ~~in the same manner as~~
13 ~~provided in section 28-6713, subsection A.~~ THIS NOTICE SHALL BE PUBLISHED BY
14 ADVERTISING IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY IN WHICH THE
15 AGENT IS LOCATED FOR TWO CONSECUTIVE PUBLICATIONS IF IT IS A WEEKLY NEWSPAPER
16 OR FOR TWO PUBLICATIONS THAT ARE AT LEAST SIX BUT NO MORE THAN TEN DAYS APART
17 IF IT IS A DAILY NEWSPAPER. The request for qualifications shall:

18 (a) Include the number of persons or firms to be included on the ~~short~~
19 FINAL list. In a request for qualifications for a horizontal construction
20 project, at least three but not more than five persons or firms shall be on
21 the ~~short~~ FINAL list. In all other requests for qualifications, three
22 persons or firms shall be on the ~~short~~ FINAL list.

23 (b) STATE THE CRITERIA TO BE USED BY THE SELECTION COMMITTEE TO SELECT
24 THE PERSON OR FIRM TO PERFORM THE PROFESSIONAL SERVICES OR THE CONSTRUCTION
25 SERVICES. THE REQUEST FOR QUALIFICATIONS SHALL ALSO STATE IN A MANNER
26 DETERMINED BY THE AGENT THE RELATIVE WEIGHT OF THE SELECTION CRITERIA AND, IF
27 REQUIRED UNDER PARAGRAPH 7, SUBDIVISION (b) OF THIS SUBSECTION, THAT ONE OF
28 THE CRITERIA WILL BE THE PERSON'S OR FIRM'S SUBCONTRACTOR SELECTION PLAN OR
29 PROCEDURES TO IMPLEMENT THE AGENT'S SUBCONTRACTOR SELECTION PLAN.

30 (c) IF THE AGENT WILL HOLD INTERVIEWS AS PART OF THE SELECTION
31 PROCESS, STATE THAT INTERVIEWS SHALL BE HELD WITH AT LEAST THREE AND NO MORE
32 THAN FIVE PERSONS OR FIRMS, EXCEPT THAT IF MULTIPLE CONTRACTS ARE BEING
33 PROCURED UNDER A SINGLE REQUEST FOR QUALIFICATIONS SOLICITATION UNDER THIS
34 SUBSECTION OR A SINGLE REQUEST FOR QUALIFICATIONS AND REQUEST FOR PROPOSALS
35 SOLICITATION UNDER THIS SUBSECTION AND SUBSECTION F OF THIS SECTION, THE
36 NUMBER TO BE INTERVIEWED SHALL BE AT LEAST THREE AND NOT MORE THAN THE NUMBER
37 OF CONTRACTS PLUS TWO.

38 2. AN AGENT SHALL initiate an appropriately qualified selection
39 committee for each ~~contract~~ REQUEST FOR QUALIFICATIONS. If the agent is
40 procuring professional services, the agent shall determine the number and
41 qualifications of the selection committee members. A selection committee for
42 the procurement of construction services shall not have more than seven
43 members, except that, if the contract involves the agent and additional
44 governmental or private participants, the number of members of the selection
45 committee shall be increased by one for each additional participant, except

1 that the maximum number of members of the selection committee is nine. The
2 selection committee for construction services shall include at least one
3 person who is a senior management employee of a licensed contractor and one
4 person who is an architect or an engineer who is registered pursuant to
5 section 32-121. ~~A contractor is not required to serve on the selection~~
6 ~~committee if the contract does not include construction and if the contract~~
7 ~~does not require delivery of a design or a set of construction documents.~~
8 These members may be employees of the agent or outside consultants. Outside
9 contractors, architects and engineers serving on a selection committee shall
10 not receive compensation from the agent for performing this service, but the
11 agent may elect to reimburse outside contractors, architects and engineers
12 for travel, lodging and other expenses incurred in connection with service on
13 a selection committee. A person who is a member of a selection committee
14 shall not be a contractor under the A contract AWARDED UNDER THE PROCUREMENT
15 or provide construction, construction services, materials or services under
16 the contract. The selection committee shall:

17 (a) Evaluate the statements of qualifications and performance data
18 that are submitted in response to the agent's request for qualifications for
19 ~~the proposed contract.~~

20 (b) If determined by the agent and included by the agent in the
21 request for qualifications, conduct ~~discussions~~ INTERVIEWS with at least the
22 number of persons or firms to be included on the short list INTERVIEWED as
23 stated in the request for qualifications ~~but not more than the number of~~
24 ~~persons or firms to be included on the short list plus two as specified in~~
25 ~~the request for qualifications~~ regarding the contract PROFESSIONAL SERVICES
26 OR CONSTRUCTION SERVICES and the relative methods of approach for furnishing
27 the required professional services or construction services.

28 (c) AFTER ANY INTERVIEWS, in order of preference, based on THE
29 criteria established and published by the selection committee and THE
30 WEIGHTING OF CRITERIA included in the request for qualifications, select a
31 ~~short~~ FINAL list FOR EACH CONTRACT of persons or firms the selection
32 committee deems to be the most qualified to provide the professional services
33 or construction services AND, IN THE CASE OF A CONTRACT THAT WILL BE
34 NEGOTIATED UNDER SUBSECTION E OF THIS SECTION, RANK THE PERSONS OR FIRMS ON
35 THE FINAL LIST IN ORDER OF PREFERENCE. THE SELECTION COMMITTEE SHALL BASE
36 THE SELECTION OF THE FINAL LIST AND THE ORDER OF PREFERENCE ON DEMONSTRATED
37 COMPETENCE AND QUALIFICATIONS ONLY. IF THE REQUEST FOR QUALIFICATIONS
38 SOLICITED MULTIPLE CONTRACTS, THE SELECTION COMMITTEE SHALL SELECT A SEPARATE
39 FINAL LIST FOR EACH CONTRACT, EXCEPT THAT IF MULTIPLE CONTRACTS ARE BEING
40 PROCURED AND IF THE REQUEST FOR QUALIFICATIONS SPECIFIED THAT ALL OF THE
41 MULTIPLE CONTRACTS WILL BE AWARDED TO A SINGLE CONTRACTOR, THE SELECTION
42 COMMITTEE MAY SELECT A SINGLE FINAL LIST FOR ALL OF THE MULTIPLE CONTRACTS.
43 The number of persons or firms on the ~~short~~ FINAL list shall be the number of
44 persons or firms specified in the request for qualifications, except that:

1 (i) If a smaller number of responsive and responsible persons or firms
2 respond to the solicitation, THE AGENT MAY ELECT TO HAVE the selection
3 committee may proceed with the selection process, INCLUDING INTERVIEWS AND
4 THE FINAL LIST, with the remaining persons or firms if at least two persons
5 or firms remain or the ~~selection committee~~ AGENT may readvertise pursuant to
6 this subsection as the ~~selection committee~~ AGENT deems necessary or
7 appropriate.

8 (ii) ~~As to professional services only,~~ If only one responsive and
9 responsible person or firm responds to the A solicitation FOR A CONTRACT OR
10 MULTIPLE CONTRACTS TO BE NEGOTIATED PURSUANT TO SUBSECTION E OF THIS SECTION,
11 the agent may ELECT TO proceed with only one person or firm ~~on the short list~~
12 IN THE SELECTION PROCESS and may award the contract OR CONTRACTS to a single
13 person or firm if the agent determines in writing that the fee negotiated
14 pursuant to subsection E of this section is fair and reasonable and that
15 either other prospective persons or firms had reasonable opportunity to
16 respond or there is not adequate time for a resolicitation.

17 (iii) ~~For professional services and construction services,~~ If a person
18 or firm on the ~~short~~ FINAL list withdraws or is removed from the selection
19 process and THE SELECTION COMMITTEE DETERMINES THAT it is in the best
20 interest of the agent, the selection committee may replace that person or
21 firm with another person or firm that submitted qualifications and that is
22 selected by the selection committee AS THE NEXT MOST QUALIFIED.

23 (d) Base the selection OF THE FINAL LIST and order of preference on
24 THE FINAL LIST ON demonstrated competence and qualifications only.

25 ~~(e) Not request or consider fees, price, man hours or any other cost~~
26 ~~information in the selection or order of preference.~~

27 3. EXCEPT FOR CONSTRUCTION SERVICES FOR HORIZONTAL CONSTRUCTION, AN
28 AGENT MAY PROCURE MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES,
29 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES, DESIGN-BUILD CONSTRUCTION
30 SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES UNDER A SINGLE
31 REQUEST FOR QUALIFICATIONS SOLICITATION UNDER THIS SUBSECTION OR, FOR
32 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES OR DESIGN-BUILD CONSTRUCTION
33 SERVICES, UNDER A SINGLE REQUEST FOR QUALIFICATIONS AND REQUEST FOR PROPOSALS
34 SOLICITATION UNDER THIS SUBSECTION AND SUBSECTION F OF THIS SECTION. IF AN
35 AGENT DOES THIS:

36 (a) THE ADVERTISEMENT AND THE REQUEST FOR QUALIFICATIONS SHALL STATE
37 THAT MULTIPLE CONTRACTS MAY OR WILL BE AWARDED, SHALL STATE THE NUMBER OF
38 CONTRACTS THAT MAY OR WILL BE AWARDED AND SHALL DESCRIBE THE SERVICES TO BE
39 PERFORMED UNDER EACH CONTRACT.

40 (b) THERE SHALL BE A SINGLE SELECTION PROCESS FOR ALL OF THE MULTIPLE
41 CONTRACTS, EXCEPT THAT FOR EACH CONTRACT THERE SHALL BE A SEPARATE FINAL LIST
42 AND A SEPARATE NEGOTIATION UNDER SUBSECTION E OF THIS SECTION OR A SEPARATE
43 REQUEST FOR PROPOSALS COMPETITION UNDER SUBSECTION F OF THIS SECTION.
44 HOWEVER, IF THE REQUEST FOR QUALIFICATIONS SPECIFIES THAT ALL OF THE MULTIPLE
45 CONTRACTS WILL BE AWARDED TO A SINGLE CONTRACTOR, THERE MAY BE A SINGLE FINAL

1 LIST AND A SINGLE NEGOTIATION FOR ALL OF THE MULTIPLE CONTRACTS UNDER
2 SUBSECTION E OF THIS SECTION OR A SINGLE REQUEST FOR PROPOSALS COMPETITION
3 UNDER SUBSECTION F OF THIS SECTION.

4 (c) THE AGENT MAY AWARD ALL OF THE MULTIPLE CONTRACTS TO ONE
5 CONTRACTOR OR MAY AWARD THE MULTIPLE CONTRACTS TO MULTIPLE CONTRACTORS.

6 4. FOR PROFESSIONAL SERVICES, AN AGENT MAY PROCURE MULTIPLE CONTRACTS
7 USING A SINGLE REQUEST FOR QUALIFICATIONS SOLICITATION UNDER THIS SUBSECTION,
8 EXCEPT THAT PROFESSIONAL SERVICES THAT ARE PART OF DESIGN-BUILD CONSTRUCTION
9 SERVICES MAY NOT BE PROCURED UNDER THIS PARAGRAPH. EACH OF THE MULTIPLE
10 CONTRACTS FOR PROFESSIONAL SERVICES MUST HAVE A TERM NOT EXCEEDING FIVE YEARS
11 AND MAY CONTINUE IN EFFECT AFTER THE FIVE YEAR TERM FOR PROFESSIONAL SERVICES
12 ON PROJECTS COMMENCED WITHIN THE FIVE YEAR TERM.

13 5. EXCEPT FOR HORIZONTAL CONSTRUCTION, AN AGENT MAY PROCURE MULTIPLE
14 CONTRACTS FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES USING A SINGLE
15 REQUEST FOR QUALIFICATIONS SOLICITATION UNDER THIS SUBSECTION OR USING A
16 SINGLE REQUEST FOR QUALIFICATIONS AND REQUEST FOR PROPOSALS SOLICITATION
17 UNDER THIS SUBSECTION AND SUBSECTION F OF THIS SECTION.

18 6. EXCEPT FOR HORIZONTAL CONSTRUCTION, AN AGENT MAY PROCURE MULTIPLE
19 CONTRACTS FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES OR FOR
20 DESIGN-BUILD CONSTRUCTION SERVICES USING A SINGLE REQUEST FOR QUALIFICATIONS
21 SOLICITATION UNDER THIS SUBSECTION OR FOR DESIGN-BUILD CONSTRUCTION SERVICES
22 USING A SINGLE REQUEST FOR QUALIFICATIONS AND REQUEST FOR PROPOSALS
23 SOLICITATION UNDER THIS SUBSECTION AND SUBSECTION F OF THIS SECTION BUT IN
24 EITHER CASE ONLY FOR A SPECIFIC SINGLE PROJECT. PORTIONS OF THE SPECIFIC
25 SINGLE PROJECT SHALL BE ALLOCATED TO SEPARATE CONTRACTS.

26 7. FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES,
27 DESIGN-BUILD CONSTRUCTION SERVICES AND JOB-ORDER-CONTRACTING CONSTRUCTION
28 SERVICES IF THE CONTRACT WILL BE NEGOTIATED UNDER SUBSECTION E OF THIS
29 SECTION OR FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES IF THE CONTRACT
30 WILL BE AWARDED PURSUANT TO SUBSECTION F OF THIS SECTION:

31 (a) THE PERSON OR FIRM SELECTED TO PERFORM THE CONSTRUCTION SERVICES
32 MUST SELECT SUBCONTRACTORS BASED ON QUALIFICATIONS ALONE OR ON A COMBINATION
33 OF QUALIFICATIONS AND PRICE AND SHALL NOT SELECT SUBCONTRACTORS BASED ON
34 PRICE ALONE. A QUALIFICATIONS AND PRICE SELECTION MAY BE A SINGLE STEP
35 SELECTION BASED ON A COMBINATION OF QUALIFICATIONS AND PRICE OR A TWO STEP
36 SELECTION. IN A TWO STEP SELECTION, THE FIRST STEP SHALL BE BASED ON
37 QUALIFICATIONS ALONE AND THE SECOND STEP MAY BE BASED ON A COMBINATION OF
38 QUALIFICATIONS AND PRICE OR ON PRICE ALONE.

39 (b) THE AGENT SHALL INCLUDE IN THE REQUEST FOR QUALIFICATIONS EITHER:

40 (i) A REQUIREMENT THAT EACH PERSON OR FIRM SUBMIT A PROPOSED
41 SUBCONTRACTOR SELECTION PLAN, A REQUIREMENT THAT THE PROPOSED SUBCONTRACTOR
42 SELECTION PLAN MUST SELECT SUBCONTRACTORS BASED ON QUALIFICATIONS ALONE OR ON
43 A COMBINATION OF QUALIFICATIONS AND PRICE AND SHALL NOT SELECT SUBCONTRACTORS
44 BASED ON PRICE ALONE AND, AS A SELECTION CRITERIA UNDER THE REQUEST FOR

1 QUALIFICATIONS, AN EVALUATION OF EACH PERSON'S OR FIRM'S PROPOSED
2 SUBCONTRACTOR SELECTION PLAN.

3 (ii) A SUBCONTRACTOR SELECTION PLAN ADOPTED BY THE AGENT THAT WILL
4 APPLY TO THE PERSON OR FIRM THAT IS SELECTED TO PERFORM THE CONSTRUCTION
5 SERVICES AND THAT REQUIRES SUBCONTRACTORS TO BE SELECTED BASED ON
6 QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND NOT
7 BASED ON PRICE ALONE, A REQUIREMENT THAT EACH PERSON OR FIRM MUST SUBMIT A
8 DESCRIPTION OF THE PROCEDURES IT PROPOSES TO USE TO CARRY OUT THE AGENT'S
9 SUBCONTRACTOR SELECTION PLAN AND, AS A SELECTION CRITERIA UNDER THE REQUEST
10 FOR QUALIFICATIONS, AN EVALUATION OF EACH PERSON'S OR FIRM'S PROPOSED
11 PROCEDURES TO CARRY OUT THE AGENT'S SUBCONTRACTOR SELECTION PLAN.

12 (c) THE AGENT SHALL INCLUDE IN ITS CONTRACT WITH THE SELECTED PERSON
13 OR FIRM EITHER:

14 (i) IF THE AGENT INCLUDED ITS SUBCONTRACTOR SELECTION PLAN IN THE
15 REQUEST FOR QUALIFICATIONS, THE AGENT'S SUBCONTRACTOR SELECTION PLAN AND THE
16 PROCEDURES PROPOSED BY THE SELECTED PERSON OR FIRM IN SUBMITTING ITS
17 QUALIFICATIONS WITH THOSE MODIFICATIONS TO THE PROCEDURES AS THE AGENT AND
18 THE SELECTED PERSON OR FIRM AGREE.

19 (ii) IF THE AGENT DID NOT INCLUDE ITS SUBCONTRACTOR SELECTION PLAN IN
20 THE REQUEST FOR QUALIFICATIONS, THE SUBCONTRACTOR SELECTION PLAN PROPOSED BY
21 THE SELECTED PERSON OR FIRM IN SUBMITTING ITS QUALIFICATIONS WITH THOSE
22 MODIFICATIONS AS THE AGENT AND THE SELECTED PERSON OR FIRM AGREE.

23 (d) IN MAKING THE SELECTION OF SUBCONTRACTORS, THE PERSON OR FIRM
24 SELECTED TO PERFORM THE CONSTRUCTION SERVICES SHALL USE THE SUBCONTRACTOR
25 SELECTION PLAN AND ANY PROCEDURES INCLUDED IN ITS CONTRACT.

26 8. THE AGENT AND THE SELECTION COMMITTEE SHALL NOT REQUEST OR CONSIDER
27 FEES, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION AT ANY POINT IN THE
28 SELECTION PROCESS UNDER THIS SUBSECTION OR SUBSECTION D OF THIS SECTION,
29 INCLUDING THE SELECTION OF THE PERSONS OR FIRMS TO BE INTERVIEWED, THE
30 SELECTION OF THE PERSONS OR FIRMS TO BE ON THE FINAL LIST, IN DETERMINING THE
31 ORDER OF PREFERENCE OF PERSONS OR FIRMS ON THE FINAL LIST OR FOR ANY OTHER
32 PURPOSE IN THE SELECTION PROCESS.

33 9. FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES AND
34 DESIGN-BUILD CONSTRUCTION SERVICES, THE CONTRACT OR CONTRACTS UNDER A SINGLE
35 REQUEST FOR QUALIFICATIONS SOLICITATION OR FOR DESIGN-BUILD CONSTRUCTION
36 SERVICES A SINGLE REQUEST FOR QUALIFICATIONS AND REQUEST FOR PROPOSALS
37 SOLICITATION SHALL BE LIMITED TO A SPECIFIC SINGLE PROJECT.

38 D. An agent shall award a contract for professional services or for
39 construction services to one of the persons or firms on the ~~short~~ FINAL list
40 FOR THAT CONTRACT prepared pursuant to subsection C of this section as
41 provided in subsection E or F of this section, except that, if fewer than the
42 number of persons or firms on the ~~short~~ FINAL list respond to the request for
43 proposals pursuant to subsection F of this section but at least two persons
44 or firms on the ~~short~~ FINAL list submit responsive proposals or if one or

1 more of the persons or firms on the ~~short~~ FINAL list drop out of the
2 selection process pursuant to subsection E or F of this section:

3 1. If there are three or more remaining persons or firms, the agent
4 shall proceed with the selection process.

5 2. If there are only two remaining persons or firms, as the agent
6 deems necessary and appropriate, the agent may elect to proceed with the
7 selection process with the two persons or firms or may elect to terminate the
8 selection process and may elect to readvertise pursuant to subsection C of
9 this section.

10 3. If there is only one remaining person or firm, ~~the agent shall~~
11 ~~terminate the selection process and may elect to readvertise pursuant to~~
12 ~~subsection C of this section, except that as to professional services only,~~
13 the agent may award the contract to a single person or firm if the agent
14 determines in writing that the fee negotiated pursuant to subsection E of
15 this section is fair and reasonable and that either other prospective persons
16 or firms had reasonable opportunity to respond or there is not adequate time
17 for a resolicitation.

18 E. ~~An~~ FOR EACH CONTRACT INCLUDED IN THE REQUEST FOR QUALIFICATIONS,
19 THE agent shall enter into SEPARATE negotiations for ~~a~~ THE contract with the
20 highest qualified person or firm ON THE FINAL LIST FOR THAT CONTRACT
21 DETERMINED PURSUANT TO SUBSECTION C OF THIS SECTION for the professional
22 services or for the construction services. HOWEVER, IF THE REQUEST FOR
23 QUALIFICATIONS IS FOR MULTIPLE CONTRACTS AND SPECIFIES THAT ALL OF THE
24 MULTIPLE CONTRACTS WILL BE AWARDED TO A SINGLE CONTRACTOR, THERE MAY BE A
25 SINGLE NEGOTIATION FOR ALL OF THE MULTIPLE CONTRACTS. The negotiations shall
26 include consideration of compensation and other contract terms that the agent
27 determines to be fair and reasonable to the agent. In making this decision,
28 the agent shall take into account the estimated value, the scope, the
29 complexity and the nature of the professional services or construction
30 services to be rendered. If the agent is not able to negotiate a
31 satisfactory contract with the HIGHEST QUALIFIED person or firm ~~considered to~~
32 ~~be the most qualified~~ ON THE FINAL LIST, at compensation and ON other
33 contract terms the agent determines to be fair and reasonable, the agent
34 shall formally terminate negotiations with that person or firm. The agent
35 may undertake negotiations with the next most qualified person or firm ON THE
36 FINAL LIST in sequence until an agreement is reached or a determination is
37 made to reject all persons or firms on the ~~short~~ FINAL list. If a contract
38 for construction services is entered into pursuant to this subsection: ~~—~~

39 1. IF THE CONTRACT IS FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION
40 SERVICES AND INCLUDES PRECONSTRUCTION SERVICES BY THE CONTRACTOR OR IF THE
41 CONTRACT IS FOR DESIGN-BUILD CONSTRUCTION SERVICES, THE AGENT SHALL ENTER
42 INTO A WRITTEN CONTRACT WITH THE CONTRACTOR FOR PRECONSTRUCTION SERVICES
43 UNDER WHICH CONTRACT THE AGENT SHALL PAY THE CONTRACTOR A FEE FOR
44 PRECONSTRUCTION SERVICES IN AN AMOUNT AGREED BY THE AGENT AND THE CONTRACTOR,
45 AND THE AGENT SHALL NOT REQUEST OR OBTAIN A FIXED PRICE OR A GUARANTEED

1 MAXIMUM PRICE FOR THE CONSTRUCTION FROM THE CONTRACTOR OR ENTER INTO A
2 CONSTRUCTION CONTRACT WITH THE CONTRACTOR UNTIL AFTER THE AGENT HAS ENTERED
3 INTO THE WRITTEN CONTRACT FOR PRECONSTRUCTION SERVICES AND A PRECONSTRUCTION
4 SERVICES FEE.

5 2. Construction shall not commence until the agent and contractor
6 agree in writing on EITHER a fixed price THAT THE AGENT WILL PAY FOR THE
7 CONSTRUCTION TO BE COMMENCED or a guaranteed maximum price for the
8 construction to be commenced.

9 F. As an alternative to subsection E of this section, an agent may
10 award design-build construction services or job-order-contracting
11 construction services as follows:

12 1. The agent shall use the selection committee appointed for the
13 ~~contract~~ REQUEST FOR QUALIFICATIONS pursuant to subsection C of this section.

14 2. The agent shall issue a request for proposals to the persons or
15 firms on the ~~short~~ FINAL list developed pursuant to subsection C of this
16 section.

17 3. For design-build construction services and job-order-contracting
18 construction services, the request for proposals shall include:

19 (a) The agent's project schedule and project final design and
20 construction budget or life cycle budget for a procurement that includes
21 maintenance services or operations services.

22 (b) A statement that the contract OR CONTRACTS will be awarded to the
23 offeror whose proposal receives the highest number of points under a scoring
24 method.

25 (c) A description of the scoring method, including a list of the
26 factors in the scoring method and the number of points allocated to each
27 factor. The factors in the scoring method shall include:

28 (i) For design-build construction services only, demonstrated
29 compliance with the design requirements.

30 (ii) Offeror qualifications.

31 (iii) Offeror financial capacity.

32 (iv) Compliance with the agent's project schedule.

33 (v) For design-build construction services only, if the request for
34 proposals specifies that the agent will spend its project budget and not more
35 than its project budget and is seeking the best proposal for the project
36 budget, compliance of the offeror's price or life cycle price for
37 procurements that include maintenance services, operations services or
38 finance services with the agent's budget as prescribed in the request for
39 proposals.

40 (vi) For design-build construction services if the request for
41 proposals does not contain the specifications prescribed in item (v) and for
42 job-order-contracting construction services, the price or life cycle price
43 for procurements that include maintenance services, operations services or
44 finance services.

45 (vii) An offeror quality management plan.

1 (viii) Other evaluation factors as determined by the agent, if any.
2 (d) For design-build construction services only, the design
3 requirements.

4 (e) A requirement that each offeror submit separately a technical
5 proposal and a price proposal and that the offeror's entire proposal be
6 responsive to the requirements in the request for proposals. For
7 design-build construction services, the price in the price proposal shall be
8 a fixed price or a guaranteed maximum price.

9 (f) A statement that in applying the scoring method the selection
10 committee will separately evaluate the technical proposal and the price
11 proposal and will evaluate and score the technical proposal before opening
12 the price proposal.

13 (g) If the agent conducts discussions pursuant to paragraph 5 of this
14 subsection, a statement that discussions will be held and a requirement that
15 each offeror submit a preliminary technical proposal before the discussions
16 are held.

17 4. If the agent determines to conduct discussions pursuant to
18 paragraph 5 of this subsection, each offeror shall submit a preliminary
19 technical proposal to the agent before those discussions are held.

20 5. If determined by the agent and included by the agent in the request
21 for proposals, the selection committee shall conduct discussions with all
22 persons or firms that submit preliminary technical proposals. Discussions
23 shall be for the purpose of clarification to assure full understanding of,
24 and responsiveness to, the solicitation requirements. Offerors shall be
25 accorded fair treatment with respect to any opportunity for discussion and
26 for clarification by the owner. Revision of preliminary technical proposals
27 shall be permitted after submission of preliminary technical proposals and
28 before award for the purpose of obtaining best and final proposals. In
29 conducting any discussions, information derived from proposals submitted by
30 competing offerors shall not be disclosed to other competing offerors.

31 6. After completion of any discussions pursuant to paragraph 5 of this
32 subsection or if no discussions are held, each offeror shall submit
33 separately the offeror's final technical proposal and its price proposal.

34 7. Before opening any price proposal, the selection committee shall
35 open the final technical proposals, evaluate the final technical proposals
36 and score the final technical proposals using the scoring method in the
37 request for proposals. No other factors or criteria may be used in the
38 evaluation and scoring.

39 8. After completion of the evaluation and scoring of all final
40 technical proposals, the selection committee shall open the price proposals,
41 evaluate the price proposals, score the price proposals and complete the
42 scoring of the entire proposals using the scoring method in the request for
43 proposals. No other factors or criteria may be used in the evaluation and
44 scoring.

1 9. The agent shall award the contract OR CONTRACTS to the responsive
2 and responsible offeror whose proposal receives the highest score under the
3 method of scoring in the request for proposals. No other factors or criteria
4 may be used in the evaluation.

5 10. The contract OR CONTRACTS file shall contain the basis on which the
6 award is made.

7 11. For design-build construction services only, the agent shall award
8 a stipulated fee equal to a percentage, as prescribed in the request for
9 proposals, of the agent's project final design and construction budget, as
10 prescribed in the request for proposals, but not less than two-tenths of one
11 per cent of the project final design and construction budget to each ~~short~~
12 FINAL list offeror who provides a responsive, but unsuccessful, proposal. If
13 the agent does not award a contract, all responsive ~~short~~ FINAL list offerors
14 shall receive the stipulated fee based on the owner's estimate of the project
15 final design and construction budget as included in the request for
16 proposals. The agent shall pay the stipulated fee to each offeror within
17 ninety days after the award of the initial contract or the decision not to
18 award a contract. In consideration for paying the stipulated fee, the agent
19 may use any ideas or information contained in the proposals in connection
20 with any contract awarded for the project, or in connection with a subsequent
21 procurement, without any obligation to pay any additional compensation to the
22 unsuccessful offerors. Notwithstanding the other provisions of this
23 paragraph, an unsuccessful ~~short~~ FINAL list offeror may elect to waive the
24 stipulated fee. If an unsuccessful ~~short~~ FINAL list offeror elects to waive
25 the stipulated fee, the agent may not use ideas and information contained in
26 the offeror's proposal, except that this restriction does not prevent the
27 agent from using any idea or information if the idea or information is also
28 included in a proposal of an offeror that accepts the stipulated fee.

29 G. Until an award and execution of a contract by an agent, only the
30 name of each person or firm on the ~~short~~ FINAL list developed pursuant to
31 subsection C of this section may be made available to the public. All other
32 information received by the agent in response to the request for
33 qualifications or contained in the proposals shall be confidential in order
34 to avoid disclosure of the contents that may be prejudicial to competing
35 offerors during the selection process. The proposals shall be open to public
36 inspection after the contract is awarded and the agent has executed the
37 contract. To the extent that the offeror designates and the agent concurs,
38 trade secrets and other proprietary data contained in a proposal remain
39 confidential.

40 H. An agent may cancel a request for qualifications or a request for
41 proposals or reject in whole or in part any or all proposals as specified in
42 the solicitation if it is in the best interest of the agent. The agent shall
43 make the reasons for cancellation or rejection part of the contract file.

1 I. Notwithstanding any other law:

2 1. The contractor for ~~construction-manager-at-risk~~, design-build or
3 job-order-contracting construction services is not required to be registered
4 to perform design services pursuant to title 32, chapter 1 if the person or
5 firm actually performing the design services on behalf of the contractor is
6 appropriately registered.

7 2. The contractor for ~~construction-manager-at-risk~~, design-build or
8 job-order-contracting construction services ~~is not required to~~ SHALL be
9 licensed to perform construction pursuant to title 32, chapter 10 ~~if the firm~~
10 ~~actually performing the construction on behalf of the contractor is~~
11 ~~appropriately licensed.~~

12 3. For each project for horizontal construction under a design-build
13 or construction-manager-at-risk construction services contract, the licensed
14 contractor performing the contract shall perform, with the contractor's own
15 organization, construction work that amounts to not less than forty-five per
16 cent of the total contract price for construction. For the purposes of this
17 paragraph, the total contract price for construction does not include the
18 cost of preconstruction services, design services or any other related
19 services or the cost to procure any right-of-way or other cost of
20 condemnation.

21 4. THERE SHALL BE A SEPARATE REQUEST FOR QUALIFICATIONS UNDER
22 SUBSECTION C OF THIS SECTION FOR EACH CONTRACT FOR HORIZONTAL CONSTRUCTION
23 CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES, DESIGN-BUILD CONSTRUCTION
24 SERVICES OR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES.

25 J. For job-order-contracting construction services only:

26 1. The MAXIMUM dollar amount of an individual job order shall ~~not be~~
27 ~~more than the amount set~~ BE ONE MILLION DOLLARS OR SUCH HIGHER OR LOWER
28 AMOUNT PRESCRIBED by the agent in an action noticed pursuant to title 38,
29 chapter 3, article 3.1 or a rule adopted by the agent as the maximum amount
30 of an individual job order. ~~This maximum amount shall not be more than seven~~
31 ~~hundred fifty thousand dollars.~~ Requirements shall not be artificially
32 divided or fragmented in order to constitute a job order that satisfies this
33 requirement.

34 2. If the contractor subcontracts or intends to subcontract part or
35 all of the work under a job order and if the job order construction services
36 contract includes descriptions of standard individual tasks, standard unit
37 prices for standard individual tasks and pricing of job orders based on the
38 number of units of standard individual tasks in the job order:

39 (a) The contractor has a duty to deliver promptly to each
40 subcontractor invited to bid a coefficient to the contractor to do all or
41 part of the work under one or more job orders:

42 (i) A copy of the descriptions of all standard individual tasks on
43 which the subcontractor is invited to bid.

44 (ii) A copy of the standard unit prices for the individual tasks on
45 which the subcontractor is invited to bid.

1 (b) If not previously delivered to the subcontractor, the contractor
2 has a duty to deliver promptly the following to each subcontractor invited to
3 or that has agreed to do any of the work included in any job order:

4 (i) A copy of the description of each standard individual task that is
5 included in the job order and that the subcontractor is invited to perform.

6 (ii) The number of units of each standard individual task that is
7 included in the job order and that the subcontractor is invited to perform.

8 (iii) The standard unit price for each standard individual task that
9 is included in the job order and that the subcontractor is invited to
10 perform.

11 K. Notwithstanding anything to the contrary in this chapter, ~~+~~

12 ~~+~~ an agent shall not procure any horizontal construction using the
13 construction-manager-at-risk, design-build or job-order-contracting method of
14 project delivery after June 30, 2010. For purposes of this paragraph, an
15 agent procures horizontal construction when the contract for the construction
16 services is executed by the agent and the contractor for the
17 construction-manager-at-risk, design-build or job-order-contracting
18 construction services. If a contract is executed for construction services
19 on or before June 30, 2010, construction services under the contract may be
20 rendered in whole or in part after June 30, 2010.

21 ~~2. Each project under a design-build construction services contract or~~
22 ~~a construction manager at risk construction services contract shall be a~~
23 ~~specific, single project. For the purposes of this paragraph, "specific,~~
24 ~~single project" means a project that is constructed at a single location, at~~
25 ~~a common location or for a common purpose.~~

26 L. Notwithstanding anything to the contrary in this section or this
27 title, an agent shall not:

28 1. Enter into a contract as contractor to provide
29 construction-manager-at-risk construction services, design-build construction
30 services or job-order-contracting construction services.

31 2. Contract with itself, with another agent, with this state or with
32 any other governmental unit of this state or the federal government for the
33 agent to provide construction-manager-at-risk construction services,
34 design-build construction services or job-order-contracting construction
35 services.

36 M. The prohibitions prescribed in subsection L of this section do not
37 prohibit an agent from providing construction for itself as provided by law.

38 N. For the purposes of this section, "professional services" includes
39 architect services, engineer services, landscape architect services, assayer
40 services, geologist services and land surveying services and any combination
41 of those services.

42 O. THE AGENT SHALL INCLUDE IN EACH CONTRACT FOR CONSTRUCTION SERVICES
43 THE FULL STREET OR PHYSICAL ADDRESS OF EACH SEPARATE LOCATION AT WHICH THE
44 CONSTRUCTION WILL BE PERFORMED AND A REQUIREMENT THAT THE CONTRACTOR AND EACH
45 SUBCONTRACTOR AT ANY LEVEL INCLUDE IN EACH OF ITS SUBCONTRACTS THE SAME

1 ADDRESS INFORMATION. THE CONTRACTOR AND EACH SUBCONTRACTOR AT ANY LEVEL
2 SHALL INCLUDE IN EACH SUBCONTRACT THE FULL STREET OR PHYSICAL ADDRESS OF EACH
3 SEPARATE LOCATION AT WHICH CONSTRUCTION WORK WILL BE PERFORMED.

4 Sec. 12. Section 34-605, Arizona Revised Statutes, is amended to read:

5 34-605. Multiterm contracts for job-order-contracting
6 construction services

7 A. A contract for construction services using the
8 job-order-contracting method may be entered into for a period of up to three
9 FIVE years, as deemed to be in the best interest of the agent, if the term of
10 the contract and conditions of renewal or extension, if any, are included in
11 the solicitation and monies are available for the first fiscal period at the
12 time of contracting. Payment and performance obligations for succeeding
13 fiscal periods are subject to the availability and appropriation of monies.

14 B. Before the use of a multiterm contract, the agent shall determine
15 in writing that:

16 1. Estimated requirements cover the period of the contract and are
17 reasonable and continuing.

18 2. Such a contract will serve the best interests of the agent by
19 encouraging effective competition or otherwise promoting economies in the
20 agent's procurement.

21 C. If monies are not appropriated or otherwise made available to
22 support the continuation of performance in a subsequent fiscal period, the
23 contract shall be cancelled and the contractor may only be reimbursed for the
24 reasonable value of any nonrecurring costs that are incurred but not
25 amortized in the price of the construction services delivered under the
26 contract or that are otherwise not recoverable. The cost of cancellation may
27 be paid from any appropriations available for these purposes.

28 Sec. 13. Section 34-606, Arizona Revised Statutes, is amended to read:

29 34-606. Bid security for design-build and job-order-contracting
30 construction services

31 A. As a guarantee that the contractor will enter into a contract, bid
32 security is required for all design-build construction services and all
33 job-order-contracting construction services awarded by an agent by
34 competitive sealed proposals pursuant to section 34-603, subsection F if the
35 agent estimates that the budget for construction, excluding the cost of any
36 finance services, maintenance services, operations services, design services,
37 preconstruction services or other related services, will be more than the
38 amount prescribed in section 41-2535, subsection D. Each proposal for
39 design-build construction services or job-order-contracting construction
40 services shall be accompanied by a certified check, cashier's check or surety
41 bond. The bid security amount for design-build construction services shall
42 be an amount equal to ten per cent of the agent's budget for construction,
43 excluding any finance services, maintenance services, operations services,
44 design services, preconstruction services or other related services, for the
45 project as stated in the request for proposals. The bid security amount for

1 job-order-contracting construction services shall be the amount determined by
2 the agent and stated in the request for proposals and shall not be more than
3 ten per cent of the agent's REASONABLY estimated budget for construction THAT
4 THE AGENT BELIEVES IS LIKELY TO ACTUALLY BE DONE during the first year of the
5 job-order-contracting contract, EXCLUDING ANY FINANCE SERVICES, MAINTENANCE
6 SERVICES, OPERATIONS SERVICES, DESIGN SERVICES, PRECONSTRUCTION SERVICES OR
7 OTHER RELATED SERVICES THAT ARE INCLUDED IN THE CONTRACT.

8 B. The agent shall return the certified check, cashier's check or
9 surety bond to the contractors whose proposals are not accepted and to the
10 successful contractor on the execution of satisfactory payment and
11 performance bonds, insurance and the contract as provided in this chapter.

12 C. Notwithstanding any other statute, the surety bond shall be
13 executed solely by a surety company or companies holding a certificate of
14 authority to transact surety business in this state issued by the director of
15 the department of insurance pursuant to title 20, chapter 2, article 1. The
16 bond shall not be executed by an individual surety or sureties, even if the
17 requirements of section 7-101 are satisfied.

18 D. The conditions and provisions of the surety bond regarding the
19 surety's obligations shall follow the following form:

20 Now, therefore, if the obligee accepts the proposal of the
21 principal and the principal enters into a contract with the
22 obligee in accordance with the terms of the proposal and gives
23 the bonds and certificates of insurance as specified in the
24 standard specifications with good and sufficient surety for the
25 faithful performance of the contract and for the prompt payment
26 of labor and materials furnished in the prosecution of the
27 contract, or in the event of the failure of the principal to
28 enter into the contract and give the bonds and certificates of
29 insurance, if the principal pays to the obligee the difference
30 not to exceed the penalty of the bond between the amount
31 specified in the proposal and any larger amount for which the
32 obligee may contract in good faith with another party to perform
33 the work covered by the proposal, this obligation is void.
34 Otherwise it remains in full force and effect. Provided,
35 however, that this bond is executed pursuant to section 34-606,
36 Arizona Revised Statutes, and all liabilities on this bond shall
37 be determined in accordance with the provisions of the section
38 to the extent as if it were copied at length in this agreement.

39 E. If the request for proposals requires security, noncompliance
40 requires that the agent reject the proposal for noncompliance with the
41 security requirement, unless the agent determines that the bid fails to
42 comply in a nonsubstantial manner with the security requirements.

43 F. After the agent opens the proposals, the proposals are irrevocable
44 for the period specified in the request for proposals, except as provided in
45 section 34-603, subsection F. If a proposer is permitted to withdraw its

1 proposal before award, no action may be had against the proposer or the bid
2 security.

3 G. All bonds given by a contractor and surety pursuant to this
4 section, regardless of their actual form, are deemed by law to be the form
5 required and set forth in this section.

6 Sec. 14. Section 34-607, Arizona Revised Statutes, is amended to read:

7 34-607. Contracts for construction-manager-at-risk,
8 design-build and job-order-contracting construction
9 services; payments to contractor; security; recovery
10 of damages by contractor for delay; progress payments

11 A. An agent shall enter into a contract with the selected person or
12 firm for construction-manager-at-risk construction services, design-build
13 construction services or job-order-contracting construction services.

14 B. The terms of a contract entered into pursuant to subsection A shall
15 include the following items:

16 1. A surety company bond or bonds as required by this chapter.

17 2. The owner by mutual agreement may make progress payments on
18 contracts of less than ninety days and shall make monthly progress payments
19 on all other contracts as provided for in this paragraph. Payment to the
20 contractor on the basis of a duly certified and approved estimate of the work
21 performed during the preceding calendar month under the contract may include
22 payment for material and equipment, but to ensure the proper performance of
23 the contract, the owner shall retain ten per cent of the amount of each
24 estimate until final completion and acceptance of all material, equipment and
25 work covered by the contract. An estimate of the work submitted shall be
26 deemed approved and certified for payment after seven days from the date of
27 submission unless before that time the owner or owner's agent prepares and
28 issues a specific written finding setting forth those items in detail in the
29 estimate of the work that are not approved for payment under the contract.
30 The owner may withhold an amount from the progress payment sufficient to pay
31 the expenses the owner reasonably expects to incur in correcting the
32 deficiency set forth in the written finding. The progress payments shall be
33 paid on or before fourteen days after the estimate of the work is certified
34 and approved. The estimate of the work shall be deemed received by the owner
35 on submission to any person designated by the owner for the submission,
36 review or approval of the estimate of the work.

37 3. When the contract is fifty per cent completed, one-half of the
38 amount retained including any securities substituted under paragraph 5 shall
39 be paid to the contractor on the contractor's request provided the contractor
40 is making satisfactory progress on the contract and there is no specific
41 cause or claim requiring a greater amount to be retained. After the contract
42 is fifty per cent completed, no more than five per cent of the amount of any
43 subsequent progress payments made under the contract may be retained
44 providing the contractor is making satisfactory progress on the project,
45 except that if at any time the owner determines satisfactory progress is not

1 being made ten per cent retention shall be reinstated for all progress
2 payments made under the contract after the determination.

3 4. On completion and acceptance of each separate building, public work
4 or other division of the contract on which the price is stated separately in
5 the contract, except as qualified in paragraph 5, payment may be made in
6 full, including retained percentages, less authorized deductions. In
7 preparing estimates, the material and equipment delivered on the site to be
8 incorporated in the job shall be taken into consideration in determining the
9 estimated value by the architect, engineer or other person, as specified in
10 the contract.

11 5. Ten per cent of all estimates shall be retained by the agent as a
12 guarantee for complete performance of the contract, to be paid to the
13 contractor within sixty days after completion or filing notice of completion
14 of the contract. Retention of payments by an agent longer than sixty days
15 after final completion and acceptance requires a specific written finding by
16 the agent of the reasons justifying the delay in payment. No agent may
17 retain any monies after sixty days that are in excess of the amount necessary
18 to pay the expenses the agent reasonably expects to incur in order to pay or
19 discharge the expenses determined by the agent in the finding justifying the
20 retention of monies. In lieu of the retention provided in this section, the
21 agent, at the option of the contractor, shall accept as a substitute an
22 assignment of time certificates of deposit of banks licensed by this state,
23 securities of or guaranteed by the United States of America, securities of
24 this state, securities of counties, municipalities and school districts
25 within this state or shares of savings and loan ~~institutions~~ ASSOCIATIONS
26 authorized to transact business in this state, in an amount equal to ten per
27 cent of all estimates that are retained by the agent as a guarantee for
28 complete performance of the contract. If the agent accepts substitute
29 security as described in this paragraph for the ten per cent retention, the
30 contractor is entitled to receive all interest or income earned by this
31 security as it accrues and all such security in lieu of retention shall be
32 returned to the contractor by the agent within sixty days after final
33 completion and acceptance of all material, equipment and work covered by the
34 contract if the contractor has furnished the agent satisfactory receipts for
35 all labor and material billed and waivers of liens from any and all persons
36 holding claims against the work. In no event shall the agent accept a time
37 certificate of deposit of a bank or shares of a savings and loan ~~institution~~
38 ASSOCIATION in lieu of the retention specified unless accompanied by a signed
39 and acknowledged waiver of the bank or savings and loan association of any
40 right or power to setoff against either the agent or the contractor in
41 relationship to the certificates or shares assigned.

42 6. In any instance where the agent has accepted substitute security as
43 provided in paragraph 5, any subcontractor undertaking to perform any part of
44 this public work is entitled to provide substitute security to the contractor

1 on terms and conditions similar to those described in paragraph 5, and this
2 security is in lieu of any retention under the subcontract.

3 7. Notwithstanding paragraphs 1 through 6, ANY OTHER PROVISION OF THIS
4 SECTION AND ANY OTHER LAW, THERE IS NO retention ~~is not required~~ for
5 job-order-contracting construction services contracts AND THE AGENT MAY ELECT
6 TO HAVE NO RETENTION FOR CONSTRUCTION-MANAGER-AT-RISK AND DESIGN-BUILD
7 CONSTRUCTION SERVICES CONTRACTS. ~~, except that the agent may elect to require~~
8 ~~retention for a job-order-contracting construction services contract. If the~~
9 ~~agent elects to require retention, paragraphs 1 through 6 apply to the~~
10 ~~job-order-contracting construction services contract, except that:~~

11 ~~(a) Retention shall be five per cent of each payment instead of ten~~
12 ~~per cent reducing to five per cent.~~

13 ~~(b) Retention applicable to each job order shall be released within~~
14 ~~sixty days after final completion of the job order and acceptance of the work~~
15 ~~under the job order.~~

16 ~~(c) No retention on the job order may be released until that time.~~

17 ~~(d) The retention percentage shall not be increased.~~

18 C. No contract for construction services may materially alter the
19 rights of any contractor, subcontractor or material supplier to receive
20 prompt and timely payment required to be included in the contract under
21 subsection B.

22 D. The contract shall be signed by the agent and the contractor.

23 E. A contract for the procurement of construction services shall
24 include a provision that provides for negotiations between the agent and the
25 contractor for the recovery of damages related to expenses incurred by the
26 contractor for a delay for which the agent is responsible, that is
27 unreasonable under the circumstances and that was not within the
28 contemplation of the parties to the contract. This section shall not be
29 construed to void any provision in the contract that requires notice of
30 delays, provides for arbitration or other procedures for settlement or
31 provides for liquidated damages.

32 F. The contractor shall pay to the contractor's subcontractors or
33 material suppliers and each subcontractor shall pay to the subcontractor's
34 subcontractor or material supplier, within seven days of receipt of each
35 progress payment, unless otherwise agreed in writing by the parties, the
36 respective amounts allowed the contractor or subcontractor on account of the
37 work performed by the subcontractors, to the extent of each subcontractor's
38 interest, except that no contract for construction services may materially
39 alter the rights of any contractor, subcontractor or material supplier to
40 receive prompt and timely payment as provided under this section. The
41 payments to subcontractors or material suppliers shall be based on payments
42 received pursuant to this section. Any diversion by the contractor or
43 subcontractor of payments received for work performed on a contract, or
44 failure to reasonably account for the application or use of those payments,
45 constitutes grounds for disciplinary action by the registrar of contractors.

1 The subcontractor or material supplier shall notify the registrar of
2 contractors and the agent in writing of any payment less than the amount or
3 percentage approved for the class or item of work as set forth in this
4 section.

5 G. A subcontractor may notify the agent in writing requesting that the
6 subcontractor be notified by the agent in writing within five days from
7 payment of each progress payment made to the contractor. The subcontractor's
8 request remains in effect for the duration of the subcontractor's work on the
9 project.

10 H. Nothing in this chapter prevents the contractor or subcontractor,
11 at the time of application and certification to the owner or contractor, from
12 withholding the application and certification to the owner or contractor for
13 payment to the subcontractor or material supplier for unsatisfactory job
14 progress, defective construction work or materials not remedied, disputed
15 work or materials, third party claims filed or reasonable evidence that a
16 claim will be filed, failure of a subcontractor to make timely payments for
17 labor, equipment and materials, damage to the contractor or another
18 subcontractor, reasonable evidence that the subcontract cannot be completed
19 for the unpaid balance of the subcontract sum or a reasonable amount for
20 retention that does not exceed the actual percentage retained by the owner.

21 I. If any payment to a contractor is delayed after the date due
22 interest shall be paid at the rate of one per cent per month or fraction of a
23 month on the unpaid balance as may be due.

24 J. If any periodic or final payment to a subcontractor is delayed by
25 more than seven days after receipt of the periodic or final payment by the
26 contractor or subcontractor, the contractor or subcontractor shall pay the
27 subcontractor or material supplier interest, beginning on the eighth day, at
28 the rate of one per cent per month or fraction of a month on the unpaid
29 balance as may be due.

30 K. Notwithstanding anything to the contrary in this section, this
31 section applies only to amounts payable in a construction services contract
32 for construction and does not apply to amounts payable in a construction
33 services contract for design services, preconstruction services, finance
34 services, maintenance services, operations services and other related
35 services.

36 Sec. 15. Section 34-608, Arizona Revised Statutes, is amended to read:

37 34-608. Construction-manager-at-risk, design-build and
38 job-order-contracting construction services surety
39 bond required; suit on bond; limitations

40 A. Except if specifically exempted by statute, before an agent
41 executes any contract with any person or firm for
42 construction-manager-at-risk construction services, design-build construction
43 services or job-order-contracting construction services, the person or firm
44 shall furnish to the agent entering into the contract the following bonds,
45 except that the bonds shall be furnished only on and at the same time as

1 execution of a contract or an amendment to a contract that commits the
2 contractor to provide construction for a fixed price, a guaranteed maximum
3 price or any other fixed amount within a designated time frame:

4 1. A performance bond in an amount equal to the full contract amount
5 conditioned on the faithful performance of the contract in accordance with
6 plans, specifications and conditions of the contract, except that: —

7 (a) For job-order-contracting construction services, the performance
8 bond shall cover the full amount of construction under the
9 job-order-contracting construction services contract, shall not include any
10 design services, preconstruction services, finance services, maintenance
11 services, operations services or other related services included in the
12 contract, ~~shall initially be based on the agent's estimate of the amount of~~
13 ~~construction that will be done under the contract and, for multiyear~~
14 ~~contracts, may be a single bond for the full term of the contract or a~~
15 ~~separate bond for each year of the contract, as determined by the agent, and~~
16 ~~except that, MAY BE A SINGLE BOND FOR THE FULL TERM OF THE CONTRACT, A~~
17 ~~SEPARATE BOND FOR EACH YEAR OF A MULTIYEAR CONTRACT OR A SEPARATE BOND FOR~~
18 ~~EACH JOB ORDER, AS DETERMINED BY THE AGENT, AND, IF A SINGLE BOND FOR THE~~
19 ~~FULL TERM OF THE CONTRACT OR A SEPARATE BOND FOR EACH YEAR OF A MULTIYEAR~~
20 ~~CONTRACT, SHALL INITIALLY BE BASED ON THE AGENT'S REASONABLE ESTIMATE OF THE~~
21 ~~AMOUNT OF CONSTRUCTION THAT THE AGENT BELIEVES IS LIKELY TO ACTUALLY BE DONE~~
22 ~~DURING THE FULL TERM OF THE CONTRACT OR DURING THE PARTICULAR YEAR OF A~~
23 ~~MULTIYEAR CONTRACT, AS APPLICABLE.~~

24 (b) For construction-manager-at-risk construction services and
25 design-build construction services, the amount of the performance bond shall
26 be the price of construction and shall not include the cost of any design
27 services, preconstruction services, finance services, maintenance services,
28 operations services or any other related services included in the contract.
29 ~~The performance bond shall cover performance of construction included in the~~
30 ~~contract and shall not cover performance of any design services,~~
31 ~~preconstruction services, finance services, maintenance services, operations~~
32 ~~services or any other related services included in the contract. The~~
33 ~~performance bond shall be solely for the protection of the public body~~
34 ~~awarding the contract.~~

35 2. A payment bond in an amount equal to the full contract amount
36 solely for the protection of claimants supplying labor or materials to the
37 contractor or the contractor's subcontractors in the prosecution of the
38 construction and not for the protection of persons providing any design
39 services, preconstruction services, finance services, maintenance services,
40 operations services or other related services provided for in the contract,
41 except that:

42 (a) For job-order-contracting construction services, the payment bond
43 shall cover the full amount of construction under the job-order-contracting
44 construction services contract, shall not include any design services,
45 preconstruction services, finance services, maintenance services, operations

1 services or other related services included in the contract, shall initially
2 be based on the agent's estimate of the amount of construction that will be
3 done under the contract and, for multiyear contracts, may be a single bond
4 for the full term of the contract or a separate bond for each year of the
5 contract, as determined by the agent MAY BE A SINGLE BOND FOR THE FULL TERM
6 OF THE CONTRACT, A SEPARATE BOND FOR EACH YEAR OF A MULTIYEAR CONTRACT OR A
7 SEPARATE BOND FOR EACH JOB ORDER, AS DETERMINED BY THE AGENT, AND, IF A
8 SINGLE BOND FOR THE FULL TERM OF THE CONTRACT OR A SEPARATE BOND FOR EACH
9 YEAR OF A MULTIYEAR CONTRACT, SHALL INITIALLY BE BASED ON THE AGENT'S
10 REASONABLE ESTIMATE OF THE AMOUNT OF CONSTRUCTION THAT THE AGENT BELIEVES IS
11 LIKELY TO ACTUALLY BE DONE DURING THE FULL TERM OF THE CONTRACT OR DURING THE
12 PARTICULAR YEAR OF A MULTIYEAR CONTRACT, AS APPLICABLE.

13 (b) For construction-manager-at-risk construction services and
14 design-build construction services, the amount of the payment bond shall be
15 the price of construction and shall not include the cost of any design
16 services, preconstruction services, finance services, maintenance services,
17 operations services or any other related services included in the contract.

18 B. Each bond shall include a provision allowing the prevailing party
19 in a suit on the bond to recover as a part of the judgment any reasonable
20 attorney fees as may be fixed by the court.

21 C. Notwithstanding any other statute, each bond shall be executed
22 solely by a surety company or companies holding a certificate of authority to
23 transact surety business in this state issued by the director of the
24 department of insurance pursuant to title 20, chapter 2, article 1. The
25 bonds shall not be executed by an individual surety or sureties, even if the
26 requirements of section 7-101 are satisfied. The bonds shall be payable to
27 the public body concerned.

28 D. The bonds shall be filed in the office of the department, board,
29 commission, institution, agency or other contracting body awarding the
30 contract.

31 E. It is illegal for a request for qualifications or a request for
32 proposals pursuant to section 34-603, or any person acting or purporting to
33 act on behalf of the contracting body, to require that bonds be furnished by
34 a particular surety company, or through a particular agent or broker.

35 F. The conditions and provisions in the payment bond regarding the
36 surety's obligations shall follow the following form:

37 Now, therefore, the condition of this obligation is that if the
38 principal promptly pays all monies due to all persons supplying
39 labor or materials to the principal or the principal's
40 subcontractors in the prosecution of the construction provided
41 for in the contract, this obligation is void. Otherwise it
42 remains in full force and effect. Provided, however, that this
43 bond is executed pursuant to title 34, chapter 6, Arizona
44 Revised Statutes, and all liabilities on this bond shall be
45 determined in accordance with the provisions, conditions and

1 limitations of title 34, chapter 6, Arizona Revised Statutes, to
2 the same extent as if they were copied at length in this
3 agreement. The prevailing party in a suit on this bond shall
4 recover as a part of the judgment reasonable attorney fees that
5 may be fixed by the court.

6 G. The conditions and provisions in the performance bond regarding the
7 surety's obligations shall follow the following form:

8 Now, therefore, the condition of this obligation is that if the
9 principal faithfully performs and fulfills all of the
10 undertakings, covenants, terms, conditions and agreements of the
11 contract during the original term of the contract and any
12 extension of the contract, with or without notice to the surety,
13 and during the life of any guaranty required under the contract,
14 and also performs and fulfills all of the undertakings,
15 covenants, terms, conditions and agreements of all duly
16 authorized modifications of the contract that may hereafter be
17 made, notice of which modifications to the surety being hereby
18 waived, the above obligation is void. Otherwise it remains in
19 full force and effect. Provided, however, that this bond is
20 executed pursuant to title 34, chapter 6, Arizona Revised
21 Statutes, and all liabilities on this bond shall be determined
22 in accordance with title 34, chapter 6, Arizona Revised
23 Statutes, to the extent as if it were copied at length in this
24 agreement. The prevailing party in a suit on this bond shall
25 recover as part of the judgment reasonable attorney fees that
26 may be fixed by the court. The performance under this bond is
27 limited to the construction to be performed under the contract
28 and does not include any design services, preconstruction
29 services, finance services, maintenance services, operations
30 services or any other related services included in the contract.

31 H. If the prime contract or specifications require any persons
32 supplying labor or materials in the prosecution of the work to furnish
33 payment or performance bonds, these bonds shall be executed solely by a
34 surety company or companies holding a certificate of authority to transact
35 surety business in this state issued by the director of the department of
36 insurance pursuant to title 20, chapter 2, article 1. Notwithstanding any
37 other statute, the bonds shall not be executed by an individual surety or
38 sureties, even if the requirements of section 7-101 are satisfied.

39 I. All bonds given by a contractor and surety pursuant to this
40 section, regardless of their actual form, are deemed by law to be in the form
41 required and set forth in this section.

42 ~~J. For design-build, or job-order contracting construction services,~~
43 ~~if a person or firm that is not licensed to perform construction pursuant to~~
44 ~~title 32, chapter 10 has a construction services contract with the agent and~~
45 ~~has contracted for the construction portion of the construction services~~

~~contract with a firm that is licensed to perform construction pursuant to title 32, chapter 10:~~

~~1. The person or firm holding the contract shall provide the payment bond and the performance bond.~~

~~2. The firm licensed to perform construction is not required to provide the payment bond or the performance bond.~~

Sec. 16. Section 41-2503, Arizona Revised Statutes, is amended to read:

41-2503. Definitions

In this chapter, unless the context otherwise requires:

1. "Architect services" means those professional architect services that are within the scope of architectural practice as provided in title 32, chapter 1.

2. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or other private legal entity.

3. "Change order" means a written order which is signed by a procurement officer and which directs the contractor to make changes that the changes clause of the contract authorizes the procurement officer to order.

4. "Construction":

(a) Means the process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property.

(b) Does not include:

(i) The routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.

(ii) The investigation, characterization, restoration or remediation due to an environmental issue of existing facilities, structures, buildings or real property.

5. "Construction-manager-at-risk" means a project delivery method in which:

(a) There is a separate contract for design services and a separate contract for construction services.

(b) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.

(c) Design and construction of the project may be in sequential phases or concurrent phases.

(d) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

6. "Construction services" means either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:

(a) Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods.

1 (b) A combination of construction and, as elected by the purchasing
2 agency, one or more related services, such as finance services, maintenance
3 services, operations services, design services and preconstruction services,
4 as those services are authorized in the definitions of
5 construction-manager-at-risk, design-build or job-order-contracting in this
6 section.

7 7. "Contract" means all types of state agreements, regardless of what
8 they may be called, for the procurement of materials, services or
9 construction or the disposal of materials.

10 8. "Contract modification" means any written alteration in the terms
11 and conditions of any contract accomplished by mutual action of the parties
12 to the contract.

13 9. "Contractor" means any person who has a contract with a state
14 governmental unit.

15 10. "Data" means documented information, regardless of form or
16 characteristic.

17 11. "Department" means the department of administration.

18 12. "Design-bid-build" means a project delivery method in which:

19 (a) There is a sequential award of two separate contracts.

20 (b) The first contract is for design services.

21 (c) The second contract is for construction.

22 (d) Design and construction of the project are in sequential phases.

23 (e) Finance services, maintenance services and operations services are
24 not included.

25 13. "Design-build" means a project delivery method in which:

26 (a) There is a single contract for design services and construction
27 services.

28 (b) Design and construction of the project may be in sequential phases
29 or concurrent phases.

30 (c) Finance services, maintenance services, operations services,
31 preconstruction services and other related services may be included.

32 14. "Design requirements":

33 (a) Means at a minimum the purchasing agency's written description of
34 the project or service to be procured, including:

35 (i) The required features, functions, characteristics, qualities and
36 properties.

37 (ii) The anticipated schedule, including start, duration and
38 completion.

39 (iii) The estimated budgets applicable to the specific procurement for
40 design and construction and, if applicable, for operation and maintenance.

41 (b) May include:

42 (i) Drawings and other documents illustrating the scale and
43 relationship of the features, functions and characteristics of the project,
44 which shall all be prepared by an architect or engineer, as appropriate, who
45 is registered pursuant to section 32-121.

1 (ii) Additional design information or documents that the purchasing
2 agency elects to include.

3 15. "Design services" means architect services, engineer services or
4 landscape architect services.

5 16. "Designee" means a duly authorized representative of the director.

6 17. "Director" means the director of the department of administration.

7 18. "Employee" means an individual drawing a salary from a state
8 governmental unit, whether elected or not, and any noncompensated individual
9 performing personal services for any state governmental unit.

10 19. "Engineer services" means those professional engineer services that
11 are within the scope of engineering practice as provided in title 32,
12 chapter 1.

13 20. "Finance services" means financing for a construction services
14 project.

15 21. "General services administration contract" means contracts awarded
16 by the United States government general services administration.

17 22. "Grant" means the furnishing of financial or other assistance,
18 including state funds or federal grant funds, by any state governmental unit
19 to any person for the purpose of supporting or stimulating educational,
20 cultural, social or economic quality of life.

21 23. "Job-order-contracting" means a project delivery method in which:

22 (a) The contract is a requirements contract for indefinite quantities
23 of construction.

24 (b) The construction to be performed is specified in job orders issued
25 during the contract.

26 (c) Finance services, maintenance services, operations services,
27 preconstruction services, design services and other related services may be
28 included.

29 24. "Landscape architect services" means those professional landscape
30 architect services that are within the scope of landscape architectural
31 practice as provided in title 32, chapter 1.

32 25. "Maintenance services" means routine maintenance, repair and
33 replacement of existing facilities, structures, buildings or real property.

34 26. "Materials":

35 (a) Means all property, including equipment, supplies, printing,
36 insurance and leases of property.

37 (b) Does not include land, a permanent interest in land or real
38 property or leasing space.

39 27. "Operations services" means routine operation of existing
40 facilities, structures, buildings or real property.

41 28. "Owner" means a state purchasing agency or state governmental unit.

42 29. "Person" means any corporation, business, individual, union,
43 committee, club, other organization or group of individuals.

44 30. "Preconstruction services" means advice during the design phase.

1 31. "Procurement":

2 (a) Means buying, purchasing, renting, leasing or otherwise acquiring
3 any materials, services, construction or construction services.

4 (b) Includes all functions that pertain to obtaining any material,
5 services, construction or construction services, including description of
6 requirements, selection and solicitation of sources, preparation and award of
7 contract, and all phases of contract administration.

8 32. "Procurement officer":

9 (a) Means any person duly authorized to enter into and administer
10 contracts and make written determinations with respect to the contracts.

11 (b) Includes an authorized representative acting within the limits of
12 the authorized representative's authority.

13 33. "Purchasing agency" means any state governmental unit which is
14 authorized by this chapter or rules adopted pursuant to this chapter, or by
15 way of delegation from the director, to enter into contracts.

16 34. "Services":

17 (a) Means the furnishing of labor, time or effort by a contractor or
18 subcontractor which does not involve the delivery of a specific end product
19 other than required reports and performance.

20 (b) Does not include employment agreements or collective bargaining
21 agreements.

22 35. "SPECIFIC SINGLE PROJECT" MEANS ONE OR MORE FACILITIES AT A SINGLE
23 LOCATION, AT A COMMON LOCATION OR, IF FOR A SIMILAR PURPOSE, AT MULTIPLE
24 LOCATIONS.

25 ~~35-~~ 36. "State governmental unit" means any department, commission,
26 council, board, bureau, committee, institution, agency, government
27 corporation or other establishment or official of the executive branch or
28 corporation commission of this state.

29 ~~36-~~ 37. "Subcontractor" means a person who contracts to perform work
30 or render service to a contractor or to another subcontractor as a part of a
31 contract with a state governmental unit.

32 ~~37-~~ 38. "Using agency" means any state governmental unit which
33 utilizes any materials, services or construction procured under this chapter.

34 Sec. 17. Section 41-2546, Arizona Revised Statutes, is amended to
35 read:

36 41-2546. Multiterm contracts

37 A. Unless otherwise provided by law, a contract for materials or
38 services may be entered into for a period of time up to five years and a
39 contract for job-order-contracting construction services may ALSO be entered
40 into for a period of time up to three FIVE years, as deemed to be in the best
41 interest of this state, if the term of the contract and conditions of renewal
42 or extension, if any, are included in the solicitation and monies are
43 available for the first fiscal period at the time of contracting. A contract
44 may be entered into for materials or services for a period of time exceeding
45 five years if, under rules adopted pursuant to this chapter, the director

1 determines in writing that such a contract would be advantageous to this
2 state. Payment and performance obligations for succeeding fiscal periods are
3 subject to the availability and appropriation of monies.

4 B. Before the use of a multiterm contract, it shall be determined in
5 writing that:

6 1. Estimated requirements cover the period of the contract and are
7 reasonable and continuing.

8 2. Such a contract will serve the best interests of this state by
9 encouraging effective competition or otherwise promoting economies in state
10 procurement.

11 C. If monies are not appropriated or otherwise made available to
12 support continuation of performance in a subsequent fiscal period, the
13 contract shall be cancelled and the contractor may only be reimbursed for the
14 reasonable value of any nonrecurring costs incurred but not amortized in the
15 price of the materials or services delivered under the contract or which are
16 otherwise not recoverable. The cost of cancellation may be paid from any
17 appropriations available for such purposes.

18 Sec. 18. Section 41-2573, Arizona Revised Statutes, is amended to
19 read:

20 41-2573. Bid security

21 A. As a guarantee that the contractor will enter into a contract, bid
22 security is required for all construction procured pursuant to section
23 41-2533 and all construction services procured pursuant to section 41-2578,
24 subsection F if the purchasing agency estimates that the budget for
25 construction, excluding the cost of any finance services, maintenance
26 services, operations services, design services, preconstruction services or
27 other related services included in the contract, will be more than the amount
28 established by section 41-2535, subsection D. Bid security shall be a
29 certified check, cashier's check or surety bond.

30 B. Bid security shall be submitted in the following amounts:

31 1. For design-bid-build construction services, ten per cent of the
32 contractor's bid.

33 2. For design-build construction services awarded by competitive
34 sealed proposals pursuant to section 41-2578, subsection F, ten per cent of
35 the purchasing agency's construction budget for the project as stated in the
36 request for proposals, excluding finance services, maintenance services,
37 operations services, design services, preconstruction services or any other
38 related services included in the contract.

39 3. For job-order-contracting construction services awarded by
40 competitive sealed proposals pursuant to section 41-2578, subsection F, the
41 amount prescribed by the purchasing agency in the request for proposals, but
42 not more than ten per cent of the purchasing agency's REASONABLY estimated
43 budget for construction THAT THE PURCHASING AGENCY BELIEVES IS LIKELY TO
44 ACTUALLY BE DONE during the first year under the contract, excluding any

1 finance services, maintenance services, operations services, design services,
2 preconstruction services or other related services included in the contract.

3 C. Nothing in this section prevents a state governmental unit from
4 requiring such bid security in relation to any construction contract. The
5 surety bond shall be executed and furnished as required by title 34, chapter
6 2 or chapter 6, as applicable, and the conditions and provisions of the
7 surety bond regarding the surety's obligations shall follow the form required
8 by section 34-201 or 34-606, as applicable.

9 D. If the invitation for bids or request for proposals requires
10 security, noncompliance requires that the bid be rejected unless, pursuant to
11 rules, it is determined that the bid fails to comply in a nonsubstantial
12 manner with the security requirements.

13 E. After the bids or proposals are opened, they are irrevocable for
14 the period specified in the invitation for bids or request for proposals,
15 except as provided in section 41-2533, subsection F and section 41-2578
16 subsection F. If a bidder is permitted to withdraw its bid before award, no
17 action may be had against the bidder or the bid security.

18 Sec. 19. Section 41-2574, Arizona Revised Statutes, is amended to
19 read:

20 41-2574. Contract performance and payment bonds

21 A. The following bonds or security is required and is binding on the
22 parties to the contract if the value of a construction award exceeds the
23 amount established by section 41-2535:

24 1. A performance bond that is executed and furnished as required under
25 title 34, chapter 2, article 2 or chapter 6, as applicable, in an amount
26 equal to one hundred per cent of the price specified in the contract
27 conditioned on the faithful performance of the contract in accordance with
28 the plans, specifications and conditions of the contract, except that: —

29 (a) For job-order-contracting construction services, the performance
30 bond shall cover the full amount of construction under the
31 job-order-contracting construction services contract, shall not include any
32 design services, preconstruction services, finance services, maintenance
33 services, operations services or other related services included in the
34 contract, ~~shall initially be based on the purchasing agency's estimate of the~~
35 ~~amount of construction that will be done under the contract and, for~~
36 ~~multiyear contracts, may be a single bond for the full term of the contract~~
37 ~~or a separate bond for each year of the contract, as determined by the~~
38 ~~purchasing agency, and except that~~ MAY BE A SINGLE BOND FOR THE FULL TERM OF
39 THE CONTRACT, A SEPARATE BOND FOR EACH YEAR OF A MULTIYEAR CONTRACT OR A
40 SEPARATE BOND FOR EACH JOB ORDER, AS DETERMINED BY THE PURCHASING AGENCY,
41 AND, IF A SINGLE BOND FOR THE FULL TERM OF THE CONTRACT OR A SEPARATE BOND
42 FOR EACH YEAR OF A MULTIYEAR CONTRACT, SHALL INITIALLY BE BASED ON THE
43 PURCHASING AGENCY'S REASONABLE ESTIMATE OF THE AMOUNT OF CONSTRUCTION THAT
44 THE PURCHASING AGENCY BELIEVES IS LIKELY TO ACTUALLY BE DONE DURING THE FULL

1 TERM OF THE CONTRACT OR DURING THE PARTICULAR YEAR OF A MULTIYEAR CONTRACT,
2 AS APPLICABLE.

3 (b) For construction-manager-at-risk construction services and
4 design-build construction services, the amount of the performance bond shall
5 be the price of construction services and shall not include the cost of any
6 design services, preconstruction services, finance services, maintenance
7 services, operations services and other related services included in the
8 contract. ~~The performance bond shall cover performance of construction~~
9 ~~included in the contract and shall not cover performance of any design~~
10 ~~services, preconstruction services, finance services, maintenance services,~~
11 ~~operations services or other related services included in the contract.~~ This
12 bond is solely for the protection of this state. The conditions and
13 provisions of the performance bond regarding the surety's obligations shall
14 follow the form required under section 34-222, subsection G or section
15 34-608, subsection G, as applicable.

16 2. A payment bond that is executed and furnished as required by title
17 34, chapter 2, article 2 or chapter 6, as applicable, in an amount equal to
18 one hundred per cent of the price specified in the contract for the
19 protection of all persons supplying labor or material to the contractor or
20 its subcontractors for the performance of the construction provided for in
21 the contract, except that: —

22 (a) For job-order-contracting construction services, the payment bond
23 shall cover the full amount of construction under the job-order-contracting
24 construction services contract, shall not include any design services,
25 preconstruction services, finance services, maintenance services, operations
26 services or other related services included in the contract, ~~shall initially~~
27 ~~be based on the purchasing agency's estimate of the amount of construction~~
28 ~~that will be done under the contract and, for multiyear contracts, may be a~~
29 ~~single bond for the full term of the contract or a separate bond for each~~
30 ~~year of the contract, as determined by the purchasing agency, and except~~
31 ~~that, MAY BE A SINGLE BOND FOR THE FULL TERM OF THE CONTRACT, A SEPARATE BOND~~
32 ~~FOR EACH YEAR OF A MULTIYEAR CONTRACT OR A SEPARATE BOND FOR EACH JOB ORDER,~~
33 ~~AS DETERMINED BY THE PURCHASING AGENCY, AND, IF A SINGLE BOND FOR THE FULL~~
34 ~~TERM OF THE CONTRACT OR A SEPARATE BOND FOR EACH YEAR OF A MULTIYEAR~~
35 ~~CONTRACT, SHALL INITIALLY BE BASED ON THE PURCHASING AGENCY'S REASONABLE~~
36 ~~ESTIMATE OF THE AMOUNT OF CONSTRUCTION THAT THE PURCHASING AGENCY BELIEVES IS~~
37 ~~LIKELY TO ACTUALLY BE DONE DURING THE FULL TERM OF THE CONTRACT OR DURING THE~~
38 ~~PARTICULAR YEAR OF A MULTIYEAR CONTRACT, AS APPLICABLE.~~

39 (b) For construction-manager-at-risk construction services and
40 design-build construction services, the amount of the payment bond shall be
41 the price of construction services and shall not include the cost of any
42 design services, preconstruction services, finance services, maintenance
43 services, operations services or other related services included in the
44 contract. The conditions and provisions of the payment bond regarding the

1 surety's obligations shall follow the form required under section 34-222,
2 subsection F or section 34-608, subsection F, as applicable.

3 B. For design-bid-build construction, the bonds prescribed in
4 subsection A of this section shall be provided on and at the same time as
5 execution of the construction contract. For construction-manager-at-risk,
6 design-build and job-order-contracting construction services, the bonds
7 prescribed in subsection A of this section shall be provided only on and at
8 the same time as execution of a contract or an amendment to a contract that
9 commits the contractor to provide construction for a fixed price, guaranteed
10 maximum price or other fixed amount within a designated time frame. For
11 ~~design-build or job-order-contracting construction services, if a person or~~
12 ~~firm that is not licensed to perform construction pursuant to title 32,~~
13 ~~chapter 10 has a construction services contract with the purchasing agency~~
14 ~~and has contracted for the construction portion of the construction services~~
15 ~~contract with a person or firm that is licensed to perform construction~~
16 ~~pursuant to title 32, chapter 10:~~

17 1. ~~The person or firm holding the contract shall provide the payment~~
18 ~~bond and the performance bond.~~

19 2. ~~If the person or firm licensed to perform construction is not the~~
20 ~~person or firm holding the contract, the person or firm licensed to perform~~
21 ~~the construction shall be a coprincipal on the payment bond and the~~
22 ~~performance bond. Both coprincipals shall be deemed the contractor as~~
23 ~~defined in section 34-222.~~

24 C. If the prime contract or specifications require any persons
25 supplying labor or materials in the prosecution of the work to furnish
26 payment or performance bonds, these bonds shall be executed solely by a
27 surety company or companies holding a certificate of authority to transact
28 surety business in this state issued by the director of the department of
29 insurance pursuant to title 20, chapter 2, article 1. Notwithstanding the
30 provisions of any other statute, the bonds shall not be executed by an
31 individual surety or sureties, even if the requirements of section 7-101 are
32 satisfied.

33 Sec. 20. Section 41-2576, Arizona Revised Statutes, is amended to
34 read:

35 41-2576. Contract payment retention; partial payment

36 A. Ten per cent of all construction contract payments shall be
37 retained by this state as insurance of proper performance of the contract or,
38 at the option of the contractor, a substitute security may be provided by the
39 contractor in an authorized form pursuant to rules adopted by the director.
40 The contractor is entitled to all interest from any such substitute security.

41 B. When the contract is fifty per cent completed, one-half of the
42 amount retained or securities substituted pursuant to this section shall be
43 paid to the contractor upon the contractor's request provided the contractor
44 is making satisfactory progress on the contract and there is no specific
45 cause or claim requiring a greater amount to be retained. After the contract

1 is fifty per cent completed, no more than five per cent of the amount of any
2 subsequent progress payments made under the contract shall be retained
3 providing the contractor is making satisfactory progress on the project,
4 except that if at any time the state determines satisfactory progress is not
5 being made ten per cent retention shall be reinstated for all progress
6 payments made under the contract subsequent to the determination.

7 C. Any retention shall be paid or substitute security shall be
8 returned to the contractor within sixty days after final completion and
9 acceptance of work under the contract. Retention of payments by a purchasing
10 agency longer than sixty days after final completion and acceptance requires
11 a specific written finding by the purchasing agency of the reasons justifying
12 the delay in payment. No purchasing agency may retain any monies after sixty
13 days which are in excess of the amount necessary to pay the expenses the
14 purchasing agency reasonably expects to incur in order to pay or discharge
15 the expenses determined by the finding justifying the retention of monies.

16 D. This state shall not accept any substitute security unless
17 accompanied by a signed and acknowledged waiver of any right or power of the
18 obligor to set off any claim against either the state governmental unit or
19 the contractor in relationship to the security assigned. In any instance in
20 which this state accepts substitute security as provided in this section, any
21 subcontractor undertaking to perform any part of the contract is entitled to
22 provide such security to the contractor.

23 E. Notwithstanding anything to the contrary in this section OR IN ANY
24 OTHER LAW:

25 1. THERE SHALL BE NO retention is ~~not~~ required for
26 job-order-contracting construction services contracts AND THE PURCHASING
27 AGENCY MAY ELECT TO HAVE NO RETENTION FOR CONSTRUCTION-MANAGER-AT-RISK AND
28 DESIGN-BUILD CONSTRUCTION SERVICES CONTRACTS. ~~, except that the purchasing~~
29 ~~agency may elect to require retention for a job order contracting~~
30 ~~construction services contract. If the purchasing agency elects to require~~
31 ~~retention, subsections A through D apply to the job order contracting~~
32 ~~construction services contract, except that:~~

33 ~~(a) Retention shall be five per cent of each payment instead of ten~~
34 ~~per cent reducing to five per cent.~~

35 ~~(b) Retention applicable to each job order shall be released within~~
36 ~~sixty days after final completion of the job order and acceptance of the work~~
37 ~~under the job order.~~

38 ~~(c) No retention on the job order may be released until that time.~~

39 ~~(d) The retention percentage shall not be increased.~~

40 2. This section applies only to amounts payable in a construction
41 services contract for construction and does not apply to amounts payable in a
42 construction services contract for design services, preconstruction services,
43 finance services, maintenance services, operations services or any other
44 related services included in the contract.

1 Sec. 21. Section 41-2578, Arizona Revised Statutes, is amended to
2 read:

3 41-2578. Procurement of specified professional and construction
4 services; definition

5 A. Architect services, assayer services, construction-manager-at-risk
6 construction services, design-build construction services, engineer services,
7 job-order-contracting construction services, geologist services, landscape
8 architect services and land surveying services shall be procured as provided
9 in this section except as authorized by sections 41-2535, 41-2536 and
10 41-2537.

11 B. This state shall provide notice, in accordance with rules, of each
12 procurement of professional services or construction services specified in
13 this section and shall award contracts on the basis of demonstrated
14 competence and qualifications for the type of professional services or
15 construction services pursuant to procedures prescribed in this section.

16 C. In the procurement of these professional services or construction
17 services pursuant to this section:

18 1. For procurement of professional services if the contract amount is
19 ~~one~~ FOR PROFESSIONAL SERVICES BY AN ARCHITECT OR ARCHITECT FIRM AND THE
20 CONTRACT AMOUNT IS TWO HUNDRED FIFTY THOUSAND DOLLARS OR LESS OR IS FOR
21 PROFESSIONAL SERVICES BY A PERSON OR FIRM OTHER THAN AN ARCHITECT AND THE
22 CONTRACT AMOUNT IS FIVE hundred thousand dollars or less, the director shall
23 encourage persons or firms engaged in the lawful practice of the profession
24 to submit annually a statement of qualifications and experience. The
25 director or the head of the purchasing agency shall initiate an appropriately
26 qualified selection committee for each ~~contract~~ PROCUREMENT, WHICH MAY
27 INCLUDE ONE OR MORE CONTRACTS, in accordance with rules adopted by the
28 director or purchasing agency. The selection committee shall evaluate
29 current statements of qualifications and experience on file with the director
30 or purchasing agency, together with those that may be submitted by other
31 persons or firms regarding the ~~proposed contract~~ PROCUREMENT. If possible,
32 the selection committee shall conduct ~~discussions~~ INTERVIEWS with at least
33 three persons or firms regarding the ~~contract~~ PROCUREMENT and the relative
34 methods of furnishing the required services and, if possible, shall select,
35 in order of preference and based on criteria established and published by the
36 selection committee, a ~~short~~ SEPARATE FINAL list FOR EACH CONTRACT BEING
37 PROCURED of at least three of the persons or firms deemed to be the most
38 qualified to provide the services required. The selection committee—

39 (a) shall base the selection of the ~~short~~ EACH FINAL list and THE
40 order of preference on demonstrated competence and qualifications only.

41 (b) THE PURCHASING AGENCY AND THE SELECTION COMMITTEE shall not
42 request or consider fees, price, man-hours or any other cost information ~~in~~
43 ~~the selection of the short list or order of preference~~ AT ANY POINT IN THE
44 SELECTION PROCESS UNDER THIS PARAGRAPH, INCLUDING THE SELECTION OF THE
45 PERSONS OR FIRMS TO BE INTERVIEWED, THE SELECTION OF THE PERSONS AND FIRMS TO

BE ON A FINAL LIST, IN DETERMINING THE ORDER OF PREFERENCE OF PERSONS AND FIRMS ON A FINAL LIST OR FOR ANY OTHER PURPOSE IN THE SELECTION PROCESS. FOR EACH CONTRACT FOR PROFESSIONAL SERVICES INCLUDED IN THE PROCUREMENT, THE PROCUREMENT OFFICER SHALL ENTER INTO SEPARATE NEGOTIATIONS FOR THE CONTRACT WITH THE HIGHEST QUALIFIED PERSON OR FIRM ON THE FINAL LIST FOR THE CONTRACT. THE NEGOTIATIONS SHALL INCLUDE CONSIDERATION OF COMPENSATION AND OTHER CONTRACT TERMS THAT THE PROCUREMENT OFFICER DETERMINES TO BE FAIR AND REASONABLE TO THIS STATE. IN MAKING THIS DETERMINATION, THE PROCUREMENT OFFICER SHALL TAKE INTO ACCOUNT THE ESTIMATED VALUE, THE SCOPE, THE COMPLEXITY AND THE NATURE OF THE PROFESSIONAL SERVICES TO BE RENDERED. IF THE PROCUREMENT OFFICER IS UNABLE TO NEGOTIATE A SATISFACTORY CONTRACT WITH THE HIGHEST QUALIFIED PERSON OR FIRM ON THE FINAL LIST FOR THE CONTRACT AT A PRICE AND ON OTHER CONTRACT TERMS THE PROCUREMENT OFFICER DETERMINES TO BE FAIR AND REASONABLE TO THIS STATE, THE PROCUREMENT OFFICER SHALL FORMALLY TERMINATE NEGOTIATIONS WITH THAT PERSON OR FIRM. THE PROCUREMENT OFFICER MAY UNDERTAKE NEGOTIATIONS WITH THE NEXT MOST QUALIFIED PERSON OR FIRM ON THE FINAL LIST FOR THE CONTRACT IN SEQUENCE UNTIL AN AGREEMENT IS REACHED OR A DETERMINATION IS MADE TO REJECT ALL PERSONS OR FIRMS ON THE FINAL LIST FOR THE CONTRACT.

2. For professional services if the contract amount is more than ~~one hundred thousand dollars~~ TWO HUNDRED FIFTY THOUSAND DOLLARS FOR PROFESSIONAL SERVICES BY AN ARCHITECT OR ARCHITECT FIRM OR FIVE HUNDRED THOUSAND DOLLARS FOR PROFESSIONAL SERVICES BY A PERSON OR FIRM OTHER THAN AN ARCHITECT and for all construction services, the purchasing agency shall follow the procedure prescribed in this paragraph AND PARAGRAPHS 3, 4, 5, 6, 7, 8, 9 AND 10 OF THIS SUBSECTION. Notwithstanding paragraph 1 of this subsection, for professional services otherwise subject to paragraph 1 of this subsection, the purchasing agency may elect to follow the procedures prescribed in this paragraph AND PARAGRAPHS 3, 4, 5, 6, 7, 8, 9 AND 10 OF THIS SUBSECTION. ~~The purchasing agency shall issue a request for qualifications for each contract and publish notice of the request for qualifications in the same manner as provided in section 41-2533, subsection C.~~ The director or head of a purchasing agency shall initiate an appropriately qualified selection committee for each ~~contract~~ REQUEST FOR QUALIFICATIONS in accordance with rules adopted by the director. If procuring professional services, the purchasing agency shall determine the number and qualifications of the selection committee members. A selection committee for the procurement of construction services shall not have more than seven members and shall include at least one person who is a senior management employee of a licensed contractor and one person who is an architect or an engineer who is registered pursuant to section 32-121. ~~A contractor is not required to serve on the selection committee if the contract does not include construction and if the contract does not require delivery of a design or a set of construction documents.~~ These members may be employees of the purchasing agency or outside consultants. Outside contractors, architects and engineers

1 serving on a selection committee shall not receive compensation from the
2 purchasing agency for performing this service, but the purchasing agency may
3 elect to reimburse outside contractors, architects and engineers for travel,
4 lodging and other expenses incurred in connection with service on a selection
5 committee. A person who is a member of a selection committee shall not be a
6 contractor under the A contract AWARDED UNDER THE PROCUREMENT or provide
7 construction, construction services, materials or services under the
8 contract. The selection committee shall:

9 (a) Evaluate the statements of qualifications and performance data
10 that are submitted in response to the purchasing agency's request for
11 qualifications ~~for the proposed contract.~~

12 (b) If determined by the purchasing agency and included by the
13 purchasing agency in the request for qualifications, conduct ~~discussions~~
14 INTERVIEWS with at least three but not more than five persons or firms as
15 specified in the request for qualifications regarding the ~~contract~~
16 PROFESSIONAL SERVICES OR CONSTRUCTION SERVICES and the relative methods of
17 approach for furnishing the required professional services or construction
18 services, EXCEPT THAT IF MULTIPLE CONTRACTS ARE BEING PROCURED UNDER A SINGLE
19 REQUEST FOR QUALIFICATIONS, THE NUMBER TO BE INTERVIEWED SHALL BE AT LEAST
20 THREE AND NOT MORE THAN THE NUMBER OF CONTRACTS PLUS TWO.

21 (c) AFTER ANY INTERVIEWS, in order of preference, based on THE
22 criteria established ~~and published by the selection committee~~ and THE
23 WEIGHTING OF THE CRITERIA included in the request for qualifications, select
24 a ~~short~~ FINAL list FOR EACH CONTRACT of three of the persons or firms the
25 selection committee deems to be the most qualified to provide the
26 professional services or construction services AND, IN THE CASE OF A CONTRACT
27 THAT WILL BE NEGOTIATED UNDER SUBSECTION E OF THIS SECTION, RANK THE THREE
28 PERSONS OR FIRMS ON THE FINAL LIST IN ORDER OF PREFERENCE. THE SELECTION
29 COMMITTEE SHALL BASE THE SELECTION OF THE FINAL LIST AND THE ORDER OF
30 PREFERENCE ON DEMONSTRATED COMPETENCE AND QUALIFICATIONS ONLY. IF THE
31 REQUEST FOR QUALIFICATIONS SOLICITED MULTIPLE CONTRACTS, THE SELECTION
32 COMMITTEE SHALL SELECT A SEPARATE FINAL LIST FOR EACH CONTRACT, EXCEPT THAT
33 IF MULTIPLE CONTRACTS ARE BEING PROCURED AND IF THE REQUEST FOR
34 QUALIFICATIONS SPECIFIED THAT ALL OF THE MULTIPLE CONTRACTS WILL BE AWARDED
35 TO A SINGLE CONTRACTOR, THE SELECTION COMMITTEE MAY SELECT A SINGLE FINAL
36 LIST FOR ALL OF THE MULTIPLE CONTRACTS. If only two responsible and
37 responsive persons or firms respond to the solicitation, ~~the selection~~
38 ~~committee may proceed with the selection process with those two persons or~~
39 ~~firms or the selection committee may readvertise pursuant to this subsection~~
40 ~~as the selection committee deems necessary or appropriate. For professional~~
41 ~~services only, if only one responsive and responsible person or firm responds~~
42 ~~to the solicitation, the purchasing agency may proceed with only one person~~
43 ~~or firm on the short list~~ REQUEST FOR QUALIFICATIONS OR IF PERSONS OR FIRMS
44 WITHDRAW FROM THE PROCUREMENT PROCESS SO THAT THERE ARE ONLY TWO RESPONSIBLE
45 AND RESPONSIVE PERSONS OR FIRMS REMAINING IN THE PROCUREMENT PROCESS, THE

PURCHASING AGENCY MAY ELECT TO HAVE THE SELECTION COMMITTEE PROCEED WITH THE PROCUREMENT, INCLUDING INTERVIEWS AND THE FINAL LIST, WITH THOSE TWO PERSONS OR FIRMS OR THE PURCHASING AGENCY MAY READVERTISE PURSUANT TO THIS SUBSECTION AS THE PURCHASING AGENCY DEEMS NECESSARY OR APPROPRIATE. IF ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR FIRM RESPONDS TO THE REQUEST FOR QUALIFICATIONS OR IF PERSONS OR FIRMS WITHDRAW FROM THE PROCUREMENT PROCESS FOR A CONTRACT OR MULTIPLE CONTRACTS TO BE NEGOTIATED UNDER SUBSECTION E OF THIS SECTION SO THAT ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR FIRM REMAINS IN THE PROCUREMENT PROCESS, THE PURCHASING AGENCY MAY ELECT TO PROCEED WITH ONLY ONE PERSON OR FIRM IN THE PROCUREMENT PROCESS and may award the contract OR CONTRACTS to a single person or firm if the purchasing agency determines in writing that the fee negotiated pursuant to subsection E of this section is fair and reasonable and either other prospective persons or firms had a reasonable opportunity to respond or there is not adequate time for a resolicitation. IF A PERSON OR FIRM ON THE FINAL LIST WITHDRAWS OR IS REMOVED FROM THE PROCUREMENT PROCESS AND THE SELECTION COMMITTEE DETERMINES THAT IT IS IN THE BEST INTEREST OF THE PURCHASING AGENCY, THE SELECTION COMMITTEE MAY REPLACE THAT PERSON OR FIRM WITH ANOTHER PERSON OR FIRM THAT SUBMITTED QUALIFICATIONS AND THAT IS SELECTED BY THE SELECTION COMMITTEE AS THE NEXT MOST QUALIFIED.

(d) Base the selection of the ~~short~~ FINAL list and order of preference ON THE FINAL LIST on demonstrated competence and qualifications only.

~~(e) Not request or consider fees, price, man-hours or any other cost information in the selection of the short list or order of preference.~~

3. THE PURCHASING AGENCY SHALL ISSUE A REQUEST FOR QUALIFICATIONS FOR EACH CONTRACT AND GIVE ADEQUATE PUBLIC NOTICE OF THE REQUEST FOR QUALIFICATIONS IN THE SAME MANNER AS PROVIDED IN SECTION 41-2533. THE REQUEST FOR QUALIFICATIONS SHALL STATE:

(a) THE CRITERIA TO BE USED BY THE SELECTION COMMITTEE TO SELECT THE PERSON OR FIRM TO PERFORM THE PROFESSIONAL SERVICES OR THE CONSTRUCTION SERVICES. THE REQUEST FOR QUALIFICATIONS SHALL ALSO STATE IN A MANNER DETERMINED BY THE PURCHASING AGENCY THE RELATIVE WEIGHT OF THE SELECTION CRITERIA AND, IF REQUIRED UNDER PARAGRAPH 8, SUBDIVISION (b) OF THIS SUBSECTION, THAT ONE OF THE CRITERIA WILL BE THE PERSON'S OR FIRM'S SUBCONTRACTOR SELECTION PLAN OR PROCEDURES TO IMPLEMENT THE PURCHASING AGENCY'S SUBCONTRACTOR SELECTION PLAN.

(b) IF THE PURCHASING AGENCY WILL HOLD INTERVIEWS AS PART OF THE SELECTION PROCESS, THAT INTERVIEWS SHALL BE HELD WITH AT LEAST THREE AND NO MORE THAN FIVE PERSONS OR FIRMS, EXCEPT THAT IF MULTIPLE CONTRACTS ARE BEING PROCURED UNDER A SINGLE REQUEST FOR QUALIFICATIONS SOLICITATION UNDER THIS SUBSECTION OR A SINGLE REQUEST FOR QUALIFICATIONS AND REQUEST FOR PROPOSALS SOLICITATION UNDER THIS SUBSECTION AND SUBSECTION F OF THIS SECTION, THE NUMBER TO BE INTERVIEWED SHALL BE AT LEAST THREE AND NOT MORE THAN THE NUMBER OF CONTRACTS PLUS TWO.

1 4. A PURCHASING AGENCY MAY PROCURE MULTIPLE CONTRACTS UNDER A SINGLE
2 REQUEST FOR QUALIFICATIONS PROCUREMENT PROCESS UNDER THIS SUBSECTION OR, FOR
3 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES OR DESIGN-BUILD CONSTRUCTION
4 SERVICES, UNDER A SINGLE REQUEST FOR QUALIFICATIONS AND REQUEST FOR PROPOSALS
5 PROCUREMENT PROCESS UNDER THIS SUBSECTION AND SUBSECTION F OF THIS SECTION.
6 IF A PURCHASING AGENCY DOES THIS:

7 (a) THE ADVERTISEMENT AND THE REQUEST FOR QUALIFICATIONS SHALL STATE
8 THAT MULTIPLE CONTRACTS MAY OR WILL BE AWARDED, SHALL STATE THE NUMBER OF
9 CONTRACTS THAT MAY OR WILL BE AWARDED AND SHALL DESCRIBE THE SERVICES TO BE
10 PERFORMED UNDER EACH CONTRACT.

11 (b) THERE SHALL BE A SINGLE SELECTION PROCESS FOR ALL OF THE MULTIPLE
12 CONTRACTS, EXCEPT THAT FOR EACH CONTRACT THERE SHALL BE A SEPARATE FINAL LIST
13 AND A SEPARATE NEGOTIATION UNDER SUBSECTION E OF THIS SECTION OR A SEPARATE
14 REQUEST FOR PROPOSALS COMPETITION UNDER SUBSECTION F OF THIS SECTION.
15 HOWEVER, IF THE REQUEST FOR QUALIFICATIONS SPECIFIES THAT ALL OF THE MULTIPLE
16 CONTRACTS WILL BE AWARDED TO A SINGLE CONTRACTOR, THERE MAY BE A SINGLE FINAL
17 LIST AND A SINGLE NEGOTIATION FOR ALL OF THE MULTIPLE CONTRACTS UNDER
18 SUBSECTION E OF THIS SECTION OR A SINGLE REQUEST FOR PROPOSALS COMPETITION
19 UNDER SUBSECTION F OF THIS SECTION.

20 (c) THE PURCHASING AGENCY MAY AWARD ALL OF THE MULTIPLE CONTRACTS TO
21 ONE CONTRACTOR OR MAY AWARD THE MULTIPLE CONTRACTS TO MULTIPLE CONTRACTORS.

22 5. FOR PROFESSIONAL SERVICES, A PURCHASING AGENCY MAY PROCURE
23 MULTIPLE CONTRACTS USING A SINGLE REQUEST FOR QUALIFICATIONS SOLICITATION
24 UNDER THIS SUBSECTION, EXCEPT THAT PROFESSIONAL SERVICES THAT ARE PART OF
25 DESIGN-BUILD CONSTRUCTION SERVICES MAY NOT BE PROCURED UNDER THIS PARAGRAPH.
26 EACH OF THE MULTIPLE CONTRACTS FOR PROFESSIONAL SERVICES MUST HAVE A TERM NOT
27 EXCEEDING FIVE YEARS AND MAY CONTINUE IN EFFECT AFTER THE FIVE YEAR TERM FOR
28 PROFESSIONAL SERVICES ON PROJECTS COMMENCED WITHIN THE FIVE YEAR TERM.

29 6. FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES, A PURCHASING
30 AGENCY MAY PROCURE MULTIPLE CONTRACTS USING A SINGLE REQUEST FOR
31 QUALIFICATIONS SOLICITATION UNDER THIS SUBSECTION OR USING A SINGLE REQUEST
32 FOR QUALIFICATIONS AND REQUEST FOR PROPOSALS SOLICITATION UNDER THIS
33 SUBSECTION AND SUBSECTION F OF THIS SECTION.

34 7. FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES AND FOR
35 DESIGN-BUILD CONSTRUCTION SERVICES, A PURCHASING AGENCY MAY PROCURE MULTIPLE
36 CONTRACTS USING A SINGLE REQUEST FOR QUALIFICATIONS SOLICITATION UNDER THIS
37 SUBSECTION OR FOR DESIGN-BUILD CONSTRUCTION SERVICES USING A SINGLE REQUEST
38 FOR QUALIFICATIONS AND REQUEST FOR PROPOSALS SOLICITATION UNDER THIS
39 SUBSECTION AND SUBSECTION F OF THIS SECTION BUT IN EITHER CASE ONLY FOR A
40 SPECIFIC SINGLE PROJECT. PORTIONS OF THE SPECIFIC SINGLE PROJECT SHALL BE
41 ALLOCATED TO SEPARATE CONTRACTS.

42 8. FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES,
43 DESIGN-BUILD CONSTRUCTION SERVICES AND JOB-ORDER-CONTRACTING CONSTRUCTION
44 SERVICES IF THE CONTRACT OR CONTRACTS WILL BE NEGOTIATED UNDER SUBSECTION E

1 OF THIS SECTION OR FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES IF THE
2 CONTRACT WILL BE AWARDED PURSUANT TO SUBSECTION F OF THIS SECTION:

3 (a) THE PERSON OR FIRM SELECTED TO PERFORM THE CONSTRUCTION SERVICES
4 MUST SELECT SUBCONTRACTORS BASED ON QUALIFICATIONS ALONE OR ON A COMBINATION
5 OF QUALIFICATIONS AND PRICE AND SHALL NOT SELECT SUBCONTRACTORS BASED ON
6 PRICE ALONE. A QUALIFICATIONS AND PRICE SELECTION MAY BE A SINGLE STEP
7 SELECTION BASED ON A COMBINATION OF QUALIFICATIONS AND PRICE OR A TWO STEP
8 SELECTION. IN A TWO STEP SELECTION, THE FIRST STEP SHALL BE BASED ON
9 QUALIFICATIONS ALONE AND THE SECOND STEP MAY BE BASED ON A COMBINATION OF
10 QUALIFICATIONS AND PRICE OR ON PRICE ALONE.

11 (b) THE PURCHASING AGENCY SHALL INCLUDE IN THE REQUEST FOR
12 QUALIFICATIONS EITHER:

13 (i) A REQUIREMENT THAT EACH PERSON OR FIRM SUBMIT A PROPOSED
14 SUBCONTRACTOR SELECTION PLAN, A REQUIREMENT THAT THE PROPOSED SUBCONTRACTOR
15 SELECTION PLAN MUST SELECT SUBCONTRACTORS BASED ON QUALIFICATIONS ALONE OR ON
16 A COMBINATION OF QUALIFICATIONS AND PRICE AND SHALL NOT SELECT SUBCONTRACTORS
17 BASED ON PRICE ALONE AND, AS A SELECTION CRITERIA UNDER THE REQUEST FOR
18 QUALIFICATIONS, AN EVALUATION OF EACH PERSON'S OR FIRM'S PROPOSED
19 SUBCONTRACTOR SELECTION PLAN.

20 (ii) A SUBCONTRACTOR SELECTION PLAN ADOPTED BY THE PURCHASING AGENCY
21 THAT WILL APPLY TO THE PERSON OR FIRM THAT IS SELECTED TO PERFORM THE
22 CONSTRUCTION SERVICES AND THAT REQUIRES SUBCONTRACTORS TO BE SELECTED BASED
23 ON QUALIFICATIONS ALONE OR ON A COMBINATION OF QUALIFICATIONS AND PRICE AND
24 NOT BASED ON PRICE ALONE, A REQUIREMENT THAT EACH PERSON OR FIRM MUST SUBMIT
25 A DESCRIPTION OF THE PROCEDURES IT PROPOSES TO USE TO CARRY OUT THE
26 PURCHASING AGENCY'S SUBCONTRACTOR SELECTION PLAN AND, AS A SELECTION CRITERIA
27 UNDER THE REQUEST FOR QUALIFICATIONS, AN EVALUATION OF EACH PERSON'S OR
28 FIRM'S PROPOSED PROCEDURES TO CARRY OUT THE PURCHASING AGENCY'S SUBCONTRACTOR
29 SELECTION PLAN.

30 (c) THE PURCHASING AGENCY SHALL INCLUDE IN ITS CONTRACT WITH THE
31 SELECTED PERSON OR FIRM EITHER:

32 (i) IF THE PURCHASING AGENCY INCLUDED ITS SUBCONTRACTOR SELECTION PLAN
33 IN THE REQUEST FOR QUALIFICATIONS, THE PURCHASING AGENCY'S SUBCONTRACTOR
34 SELECTION PLAN AND THE PROCEDURES PROPOSED BY THE SELECTED PERSON OR FIRM IN
35 SUBMITTING ITS QUALIFICATIONS WITH THOSE MODIFICATIONS TO THE PROCEDURES AS
36 THE PURCHASING AGENCY AND THE SELECTED PERSON OR FIRM AGREE.

37 (ii) IF THE PURCHASING AGENCY DID NOT INCLUDE ITS SUBCONTRACTOR
38 SELECTION PLAN IN THE REQUEST FOR QUALIFICATIONS, THE SUBCONTRACTOR SELECTION
39 PLAN PROPOSED BY THE SELECTED PERSON OR FIRM IN SUBMITTING ITS QUALIFICATIONS
40 WITH THOSE MODIFICATIONS AS THE PURCHASING AGENCY AND THE SELECTED PERSON OR
41 FIRM AGREE.

42 (d) IN MAKING THE SELECTION OF SUBCONTRACTORS, THE PERSON OR FIRM
43 SELECTED TO PERFORM THE CONSTRUCTION SERVICES SHALL USE THE SUBCONTRACTOR
44 SELECTION PLAN AND ANY PROCEDURES INCLUDED IN ITS CONTRACT.

1 9. THE PURCHASING AGENCY AND THE SELECTION COMMITTEE SHALL NOT REQUEST
2 OR CONSIDER FEES, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION AT ANY POINT
3 IN THE SELECTION PROCESS UNDER THIS SUBSECTION AND SUBSECTION D OF THIS
4 SECTION, INCLUDING THE SELECTION OF THE PERSONS OR FIRMS TO BE INTERVIEWED,
5 THE SELECTION OF THE PERSONS OR FIRMS TO BE ON THE FINAL LIST, IN DETERMINING
6 THE ORDER OF PREFERENCE OF PERSONS OR FIRMS ON THE FINAL LIST OR FOR ANY
7 OTHER PURPOSE IN THE SELECTION PROCESS.

8 10. FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES AND
9 DESIGN-BUILD CONSTRUCTION SERVICES, THE CONTRACT OR CONTRACTS UNDER A SINGLE
10 REQUEST FOR QUALIFICATIONS PROCUREMENT PROCESS OR FOR DESIGN-BUILD
11 CONSTRUCTION SERVICES A SINGLE REQUEST FOR QUALIFICATIONS AND REQUEST FOR
12 PROPOSALS PROCUREMENT PROCESS SHALL BE LIMITED TO A SPECIFIC SINGLE PROJECT.

13 D. The director shall award a contract for professional services or
14 construction services to one of the persons or firms on the ~~short~~ FINAL list
15 FOR THAT CONTRACT prepared pursuant to subsection C of this section as
16 provided in subsection E or F of this section, except that:

17 1. If only two persons or firms that the selection committee
18 determines are qualified respond to the request for proposals pursuant to
19 subsection F of this section or if one of the three persons or firms ON THE
20 FINAL LIST drops out of the selection process pursuant to subsection E or F
21 of this section so that only two OF THE persons or firms ~~remain~~ on the ~~short~~
22 FINAL list REMAIN, the purchasing agency, as the purchasing agency deems
23 necessary or appropriate, may elect to proceed with the ~~selection~~ PROCUREMENT
24 process with the two persons or firms or elect to readvertise pursuant to
25 subsection C of this section.

26 2. ~~For professional services only,~~ If only one responsive and
27 responsible person or firm responds to the ~~solicitation~~ REQUEST FOR
28 QUALIFICATIONS FOR A CONTRACT OR MULTIPLE CONTRACTS TO BE NEGOTIATED UNDER
29 SUBSECTION E OF THIS SECTION OR IF PERSONS OR FIRMS WITHDRAW FROM THE
30 PROCUREMENT PROCESS SO THAT ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR
31 FIRM REMAINS IN THE PROCUREMENT PROCESS, the purchasing agency may award the
32 contract OR CONTRACTS to a single person or firm if the purchasing agency
33 determines in writing that the fee negotiated pursuant to subsection E of
34 this section is fair and reasonable and either other prospective persons or
35 firms had a reasonable opportunity to respond or there is not adequate time
36 for a resolicitation.

37 E. FOR EACH CONTRACT INCLUDED IN THE REQUEST FOR QUALIFICATIONS, the
38 procurement officer shall enter into SEPARATE negotiations for a- THE
39 contract with the highest qualified person or firm ON THE FINAL LIST FOR THAT
40 CONTRACT DETERMINED PURSUANT TO SUBSECTION C OF THIS SECTION for the
41 professional services or construction services. HOWEVER, IF THE REQUEST FOR
42 QUALIFICATIONS IS FOR MULTIPLE CONTRACTS AND SPECIFIES THAT ALL OF THE
43 MULTIPLE CONTRACTS WILL BE AWARDED TO A SINGLE CONTRACTOR, THERE MAY BE A
44 SINGLE NEGOTIATION FOR ALL OF THE MULTIPLE CONTRACTS. The negotiations shall
45 include consideration of compensation and other contract terms that the

1 officer determines to be fair and reasonable to this state. In making this
2 decision, the procurement officer shall take into account the estimated
3 value, the scope, the complexity and the nature of the professional services
4 or construction services to be rendered. If the procurement officer is
5 unable to negotiate a satisfactory contract with the HIGHEST QUALIFIED person
6 or firm ~~considered to be the most qualified~~ ON THE FINAL LIST, at
7 compensation and ON other contract terms the procurement officer determines
8 to be fair and reasonable to this state, the procurement officer shall
9 formally terminate negotiations with that person or firm. The procurement
10 officer may undertake negotiations with the next most qualified person or
11 firm ON THE FINAL LIST in sequence until an agreement is reached or a
12 determination is made to reject all persons or firms on the ~~short~~ FINAL list.
13 If a contract for construction services is entered into pursuant to this
14 subsection: —

15 1. IF THE CONTRACT IS FOR CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION
16 SERVICES AND INCLUDES PRECONSTRUCTION SERVICES BY THE CONTRACTOR OR IF THE
17 CONTRACT IS FOR DESIGN-BUILD CONSTRUCTION SERVICES, THE PURCHASING AGENCY
18 SHALL ENTER INTO A WRITTEN CONTRACT WITH THE CONTRACTOR FOR PRECONSTRUCTION
19 SERVICES UNDER WHICH CONTRACT THE PURCHASING AGENCY SHALL PAY THE CONTRACTOR
20 A FEE FOR PRECONSTRUCTION SERVICES IN AN AMOUNT AGREED BY THE PURCHASING
21 AGENCY AND THE CONTRACTOR, AND THE PURCHASING AGENCY SHALL NOT REQUEST OR
22 OBTAIN A FIXED PRICE OR A GUARANTEED MAXIMUM PRICE FOR THE CONSTRUCTION FROM
23 THE CONTRACTOR OR ENTER INTO A CONSTRUCTION CONTRACT WITH THE CONTRACTOR
24 UNTIL AFTER THE PURCHASING AGENCY HAS ENTERED INTO THE WRITTEN CONTRACT FOR
25 PRECONSTRUCTION SERVICES AND A PRECONSTRUCTION SERVICES FEE.

26 2. Construction shall not commence until the purchasing agency and
27 contractor agree in writing on EITHER a fixed price THAT THE PURCHASING
28 AGENCY WILL PAY FOR THE CONSTRUCTION TO BE COMMENCED or a guaranteed maximum
29 price for the construction to be commenced.

30 F. As an alternative to subsection E of this section, the procurement
31 officer may award design-build construction services or job-order-contracting
32 construction services as follows:

33 1. The procurement officer shall use the selection committee appointed
34 for the ~~contract~~ REQUEST FOR QUALIFICATIONS pursuant to subsection C of this
35 section.

36 2. The procurement officer shall issue a request for proposals to the
37 persons or firms on the ~~short~~ FINAL list developed pursuant to subsection C
38 of this section.

39 3. For design-build construction services and job-order-contracting
40 construction services, the request for proposals shall include:

41 (a) The purchasing agency's project schedule and project final design
42 and construction budget or life cycle budget for a procurement that includes
43 maintenance services or operations services.

1 (b) A statement that the contract OR CONTRACTS will be awarded to the
2 person or firm whose proposal receives the highest number of points under a
3 scoring method.

4 (c) A description of the scoring method, including a list of the
5 factors in the scoring method and the number of points allocated to each
6 factor. The factors in the scoring method shall include:

7 (i) For design-build construction services only, demonstrated
8 compliance with the design requirements.

9 (ii) Offeror qualifications.

10 (iii) Offeror financial capacity.

11 (iv) Compliance with the purchasing agency's project schedule.

12 (v) For design-build construction services only, if the request for
13 proposals specifies that the purchasing agency will spend its project budget
14 and not more than its project budget and is seeking the best proposal for the
15 project budget, compliance of the offeror's price or life cycle price for
16 procurements that include maintenance services, operations services or
17 finance services with the purchasing agency's budget as prescribed in the
18 request for proposals.

19 (vi) For design-build construction services if the request for
20 proposals does not contain the specifications prescribed in item (v) and for
21 job-order-contracting construction services, the price or life cycle price
22 for procurements that include maintenance services, operations services or
23 finance services.

24 (vii) An offeror quality management plan.

25 (viii) Other evaluation factors as determined by the purchasing
26 agency, if any.

27 (d) For design-build construction services only, the design
28 requirements.

29 (e) A requirement that each offeror submit separately a technical
30 proposal and a price proposal and that the offeror's entire proposal be
31 responsive to the requirements in the request for proposals. For
32 design-build construction services, the price in the price proposal shall be
33 a fixed price or a guaranteed maximum price.

34 (f) A statement that in applying the scoring method the selection
35 committee will separately evaluate the technical proposal and the price
36 proposal and will evaluate and score the technical proposal before opening
37 the price proposal.

38 (g) If the purchasing agency conducts discussions pursuant to
39 paragraph 5 of this subsection, a statement that discussions will be held and
40 a requirement that each offeror submit a preliminary technical proposal
41 before the discussions are held.

42 4. If the purchasing agency determines to conduct discussions pursuant
43 to paragraph 5 of this subsection, each offeror shall submit a preliminary
44 technical proposal to the purchasing agency before those discussions are
45 held.

1 5. If determined by the purchasing agency and included by the
2 purchasing agency in the request for proposals, the selection committee shall
3 conduct discussions with all persons or firms that submit preliminary
4 technical proposals. Discussions shall be for the purpose of clarification
5 to assure full understanding of, and responsiveness to, the solicitation
6 requirements. Offerors shall be accorded fair treatment with respect to any
7 opportunity for discussion and for clarification by the owner. Revision of
8 preliminary technical proposals shall be permitted after submission of
9 preliminary technical proposals and before award for the purpose of obtaining
10 best and final proposals. In conducting any discussions, information derived
11 from proposals submitted by competing offerors shall not be disclosed to
12 other competing offerors.

13 6. After completion of any discussions pursuant to paragraph 5 of this
14 subsection or if no discussions are held, each offeror shall submit
15 separately its final technical proposal and its price proposal.

16 7. Before opening any price proposal, the selection committee shall
17 open the final technical proposals, evaluate the final technical proposals
18 and score the final technical proposals using the scoring method in the
19 request for proposals. No other factors or criteria may be used in the
20 evaluation and scoring.

21 8. After completion of the evaluation and scoring of all final
22 technical proposals, the selection committee shall open the price proposals,
23 evaluate the price proposals, score the price proposals and complete the
24 scoring of the entire proposals using the scoring method in the request for
25 proposals. No other factors or criteria may be used in the evaluation and
26 scoring.

27 9. The procurement officer shall award the contract OR CONTRACTS to
28 the responsive and responsible offeror whose proposal receives the highest
29 score under the method of scoring in the request for proposals. No other
30 factors or criteria may be used in the evaluation.

31 10. The contract OR CONTRACTS file shall contain the basis on which the
32 award is made.

33 11. For design-build construction services only, the procurement
34 officer shall award a stipulated fee equal to a percentage, as prescribed in
35 the request for proposals, of the purchasing agency's project final design
36 and construction budget, as prescribed in the request for proposals, but not
37 less than two-tenths of one per cent of the project final design and
38 construction budget to each ~~short~~ FINAL list offeror who provides a
39 responsive, but unsuccessful, proposal. If the procurement officer does not
40 award a contract, all responsive ~~short~~ FINAL list offerors shall receive the
41 stipulated fee based on the purchasing agency's estimate of the project final
42 design and construction budget as included in the request for proposals. The
43 procurement officer shall pay the stipulated fee to each offeror within
44 ninety days after the award of the initial contract or the decision not to
45 award a contract. In consideration for paying the stipulated fee, the

1 procurement officer may use any ideas or information contained in the
2 proposals in connection with any contract awarded for the project, or in
3 connection with a subsequent procurement, without any obligation to pay any
4 additional compensation to the unsuccessful offerors. Notwithstanding the
5 other provisions of this paragraph, an unsuccessful ~~short~~ FINAL list offeror
6 may elect to waive the stipulated fee. If an unsuccessful ~~short~~ FINAL list
7 offeror elects to waive the stipulated fee, the purchasing agency may not use
8 ideas and information contained in the offeror's proposal, except that this
9 restriction does not prevent the purchasing agency from using any idea or
10 information if the idea or information is also included in a proposal of an
11 offeror that accepts the stipulated fee.

12 G. Until award and execution of a contract by a purchasing agency,
13 only the name of each person or firm on the ~~short~~ FINAL list developed
14 pursuant to subsection C of this section may be made available to the public.
15 All other information received by the purchasing agency in response to the
16 request for qualifications or contained in the proposals shall be
17 confidential in order to avoid disclosure of the contents that may be
18 prejudicial to competing offerors during the selection process. The
19 proposals shall be open to public inspection after the contract is awarded
20 and the purchasing agency has executed the contract. To the extent that the
21 offeror designates and the purchasing agency concurs, trade secrets and other
22 proprietary data contained in a proposal remain confidential.

23 H. A purchasing agency may cancel a request for qualifications or a
24 request for proposals or reject in whole or in part any or all submissions of
25 qualifications or proposals as specified in the solicitation if it is in the
26 best interest of the purchasing agency. The purchasing agency shall make the
27 reasons for cancellation or rejection part of the contract file.

28 I. Notwithstanding any other law:

29 1. The contractor for ~~construction-manager-at-risk~~, design-build or
30 job-order-contracting construction services is not required to be registered
31 to perform design services pursuant to title 32, chapter 1 if the person or
32 firm actually performing the design services on behalf of the contractor is
33 appropriately registered.

34 2. The contractor for ~~construction-manager-at-risk~~, design-build or
35 job-order-contracting construction services ~~is not required to~~ SHALL be
36 licensed to perform construction pursuant to title 32, chapter 10 ~~if the firm~~
37 ~~actually performing the construction on behalf of the contractor is~~
38 ~~appropriately licensed.~~

39 3. ~~Each project under a design-build construction services contract or~~
40 ~~a construction-manager-at-risk construction services contract shall be a~~
41 ~~specific, single project. For the purposes of this paragraph, "specific,~~
42 ~~single project" means a project that is constructed at a single location, at~~
43 ~~a common location or for a common purpose.~~

J. For job-order-contracting construction services only:

1. The MAXIMUM dollar amount of an individual job order shall ~~not be more than the~~ BE ONE MILLION DOLLARS OR SUCH HIGHER OR LOWER amount ~~set~~ PRESCRIBED by the director in a rule adopted pursuant to chapter 6 of this title as the maximum amount of an individual job order, except that:

(a) The amount for school districts in rules adopted pursuant to section 15-213, subsection A shall be ~~the same~~ ONE MILLION DOLLARS OR SUCH HIGHER OR LOWER amount as adopted by the director. ~~and,~~

(b) Without affecting the scope of section 41-2501, subsection N or any similar provision, the MAXIMUM amount OF AN INDIVIDUAL JOB ORDER for the Arizona board of regents, the legislative and judicial branches of state government and the state compensation fund shall be ~~the amount~~ ONE MILLION DOLLARS OR SUCH HIGHER OR LOWER AMOUNT adopted by the Arizona board of regents, the legislative or judicial branches of state government or the state compensation fund, respectively, either in an action noticed pursuant to title 38, chapter 3, article 3.1 or an adopted rule. ~~This maximum amount shall not be more than seven hundred fifty thousand dollars.~~ Requirements shall not be artificially divided or fragmented in order to constitute a job order that satisfies this requirement.

2. If the contractor subcontracts or intends to subcontract part or all of the work under a job order and if the job-order construction services contract includes descriptions of standard individual tasks, standard unit prices for standard individual tasks and pricing of job orders based on the number of units of standard individual tasks in the job order:

(a) The contractor has a duty to deliver promptly to each subcontractor invited to bid a coefficient to the contractor to do all or part of the work under one or more job orders:

(i) A copy of the descriptions of all standard individual tasks on which the subcontractor is invited to bid.

(ii) A copy of the standard unit prices for the individual tasks on which the subcontractor is invited to bid.

(b) If not previously delivered to the subcontractor, the contractor has a duty to deliver promptly the following to each subcontractor invited to or that has agreed to do any of the work included in any job order:

(i) A copy of the description of each standard individual task that is included in the job order and that the subcontractor is invited to perform.

(ii) The number of units of each standard individual task that is included in the job order and that the subcontractor is invited to perform.

(iii) The standard unit price for each standard individual task that is included in the job order and that the subcontractor is invited to perform.

K. Notwithstanding anything to the contrary in this section or this title, a purchasing agency shall not:

1. Enter into a contract as contractor to provide construction-manager-at-risk construction services, design-build construction services or job-order-contracting construction services.

2. Contract with itself, with another purchasing agency, with this state or with any other governmental unit of this state or the federal government for the purchasing agency to provide construction-manager-at-risk construction services, design-build construction services or job-order-contracting construction services.

L. The prohibitions prescribed in subsection K of this section do not prohibit a purchasing agency from providing construction for itself as provided by law.

M. For the purposes of this section, "professional services" includes architect services, engineer services, landscape architect services, assayer services, geologist services and land surveying services and any combination of those services.

N. THE PROCUREMENT OFFICER SHALL INCLUDE IN EACH CONTRACT FOR CONSTRUCTION SERVICES THE FULL STREET OR PHYSICAL ADDRESS OF EACH SEPARATE LOCATION AT WHICH THE CONSTRUCTION WILL BE PERFORMED AND A REQUIREMENT THAT THE CONTRACTOR AND EACH SUBCONTRACTOR AT ANY LEVEL INCLUDE IN EACH OF ITS SUBCONTRACTS THE SAME ADDRESS INFORMATION. THE CONTRACTOR AND EACH SUBCONTRACTOR AT ANY LEVEL SHALL INCLUDE IN EACH SUBCONTRACT THE FULL STREET OR PHYSICAL ADDRESS OF EACH SEPARATE LOCATION AT WHICH CONSTRUCTION WORK WILL BE PERFORMED.

Sec. 22. Section 41-2579, Arizona Revised Statutes, is amended to read:

41-2579. Project delivery methods for design and construction services

A. A purchasing agency may procure design services, construction and construction services, as applicable, under any of the following project delivery methods:

1. Design-bid-build.
2. Construction-manager-at-risk.
3. Design-build.
4. Job-order-contracting.

B. For the design-bid-build project delivery method, the director shall procure:

1. Design services pursuant to section 41-2578.
2. Construction by competitive sealed bidding, except as otherwise provided in section 41-2532.

C. The director shall procure construction services under the construction-manager-at-risk, design-build and job-order-contracting project delivery methods pursuant to section 41-2578.

4.11.D. The director shall procure design services relating to a construction-manager-at-risk construction services project pursuant to section 41-2578.

1 E. For job-order-contracting construction services projects, if the
2 director does not include design services in the job-order-contracting
3 construction services contract, the director shall procure any design
4 services relating to job-order-contracting construction services projects
5 under the contract pursuant to section 41-2578.

6 ~~F. On or before January 15 of each year, any state entity that uses~~
7 ~~construction manager-at-risk, design-build or job-order-contracting to~~
8 ~~procure construction services in a calendar year shall transmit to the~~
9 ~~secretary of state a report on the benefits associated with the use of~~
10 ~~construction manager-at-risk, design-build or job-order-contracting to~~
11 ~~procure construction services. The report shall include the number of~~
12 ~~projects completed in the preceding calendar year using the procurement~~
13 ~~methods, the cost and description of each project and an estimate of any cost~~
14 ~~savings or other benefits realized through the use of the procurement method.~~

15 Sec. 23. Revision of rules, policies and procedures

16 On or before December 31, 2005, the director of the department of
17 administration shall revise all department administrative rules and all
18 department policies and procedures to conform with sections 41-2503, 41-2573,
19 41-2574, 41-2578 and 41-2579, Arizona Revised Statutes, including the
20 amendments adopted by this act.

21 Sec. 24. Department of transportation; limitation on number of
22 construction-manager-at-risk construction services,
23 design-build and job-order-contracting construction
24 services contracts through December 31, 2006

25 Notwithstanding any other law, beginning on the effective date of this
26 act through December 31, 2006, the department of transportation may solicit
27 and enter into up to but not exceeding three contracts for
28 construction-manager-at-risk construction services, three contracts for
29 design-build and three contracts for job-order-contracting construction
30 services. Each of these contracts shall be a pilot project. If the
31 department elects to enter into fewer than three contracts in any of the
32 three categories, the department is limited to a maximum of three contracts
33 in each of the other categories.

34 Sec. 25. Emergency

35 This act is an emergency measure that is necessary to preserve the
36 public peace, health or safety and is operative immediately as provided by
37 law.

APPROVED BY THE GOVERNOR APRIL 20, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 20, 2005.

Passed the House March 8, 2005

Passed the Senate April 12, 2005

by the following vote: 59 Ayes,

by the following vote: 28 Ayes,

0 Nays, 1 Not Voting

2 Nays, 0 Not Voting

With Emergency

With Emergency

[Signature]
Speaker of the House

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

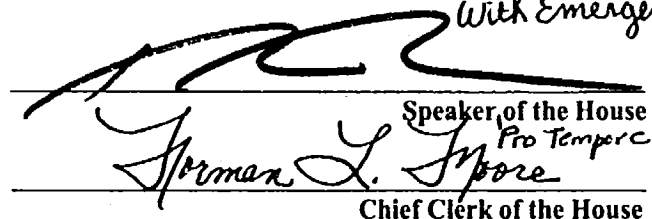
H.B. 2579

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 14, 2005,

by the following vote: 49 Ayes,

7 Nays, 4 Not Voting
With Emergency


Speaker of the House
Pro Tempore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

15th day of April, 2005


at 9:00 o'clock a. M.


Secretary to the Governor

Approved this 20 day of

April, 2005,

at 2nd o'clock P. M.


Governor of Arizona

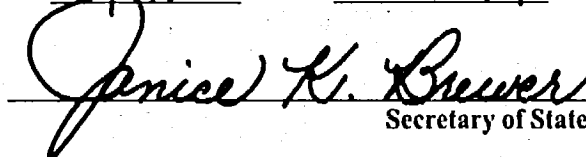
H.B. 2579

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 20 day of April, 2005,

at 4:10 o'clock P. M.


Secretary of State